



*Fleming Collection*

# In the Court of Appeal.

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APPEAL FROM THE COURT OF CHANCERY.

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BETWEEN

SANDFORD FLEMING,

*(Plaintiff)* RESPONDENT;

AND

JOHN M. McNABB AND ALEXANDER McNABB,

*(Defendants)* APPELLANTS.

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APPEAL BOOK.

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ROBINSON, O'BRIEN & SCOTT,

AGENTS FOR O'CONNOR & O'CONNOR,

*Appellants Solicitors.*

DENNISTOUN BROS. & HALL,

*Respondents Solicitors.*

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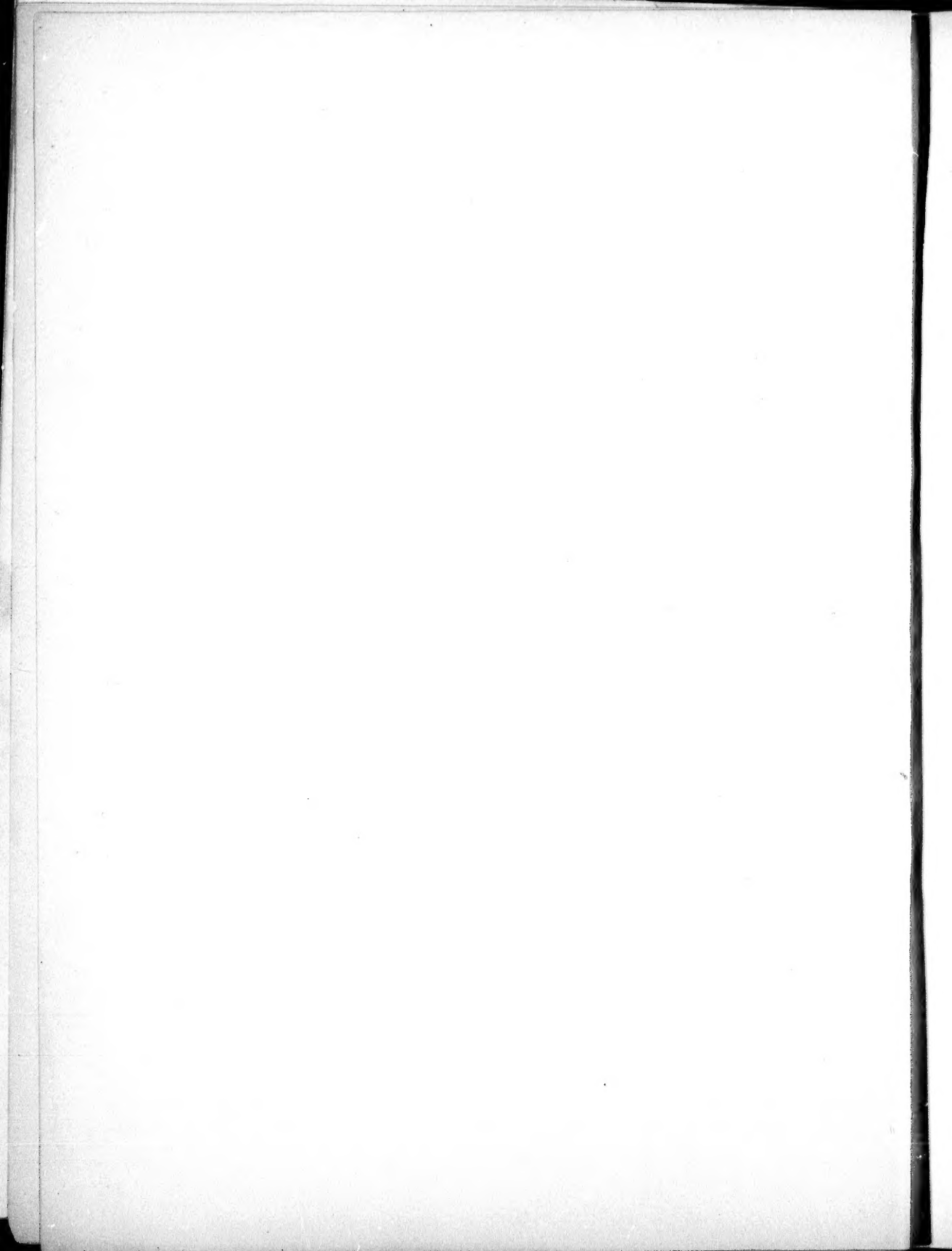
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## IN THE COURT OF APPEAL.

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BETWEEN

SANDFORD FLEMING,

*(Plaintiff)* RESPONDENT ;

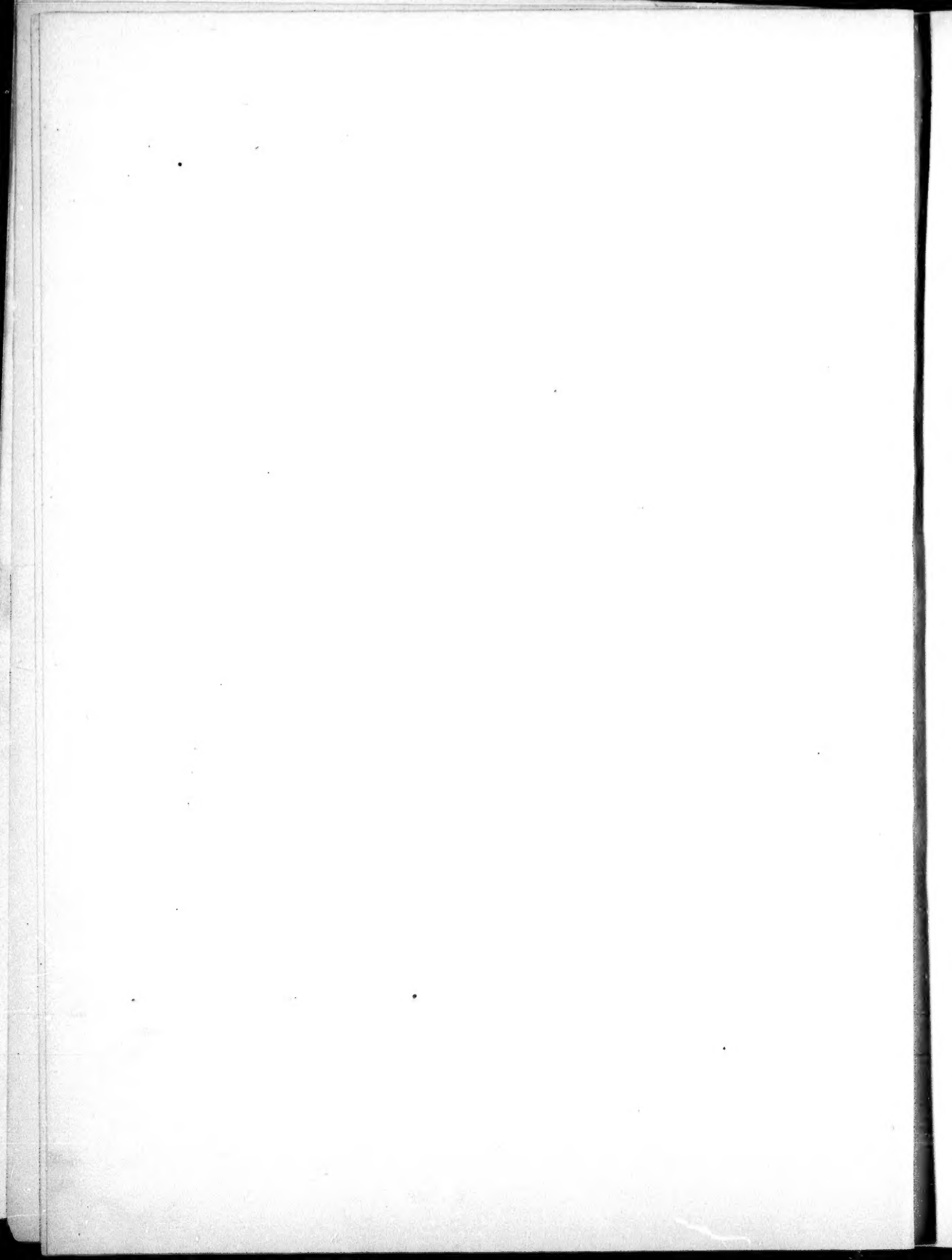
AND

JOHN M. McNABB AND ALEXANDER McNABB,

*(Defendants)* APPELLANTS.

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This is an appeal from the judgment of the Court of Chancery, setting aside the sale for taxes of certain lands in the Bill of Complaint mentioned, and ordering the deed thereof to be delivered up to be cancelled.



## BILL OF COMPLAINT.

FILED 1880 October 22<sup>nd</sup>

*In* Chancery.

BETWEEN

SANDFORD FLEMING,

*Plaintiff;*

AND

JOHN M. McNABB, AND ALEXANDER McNABB,

*Defendants.*

TOWN OF PETERBOROUGH.

*To the Honourable the Judges of the Court of Chancery.*

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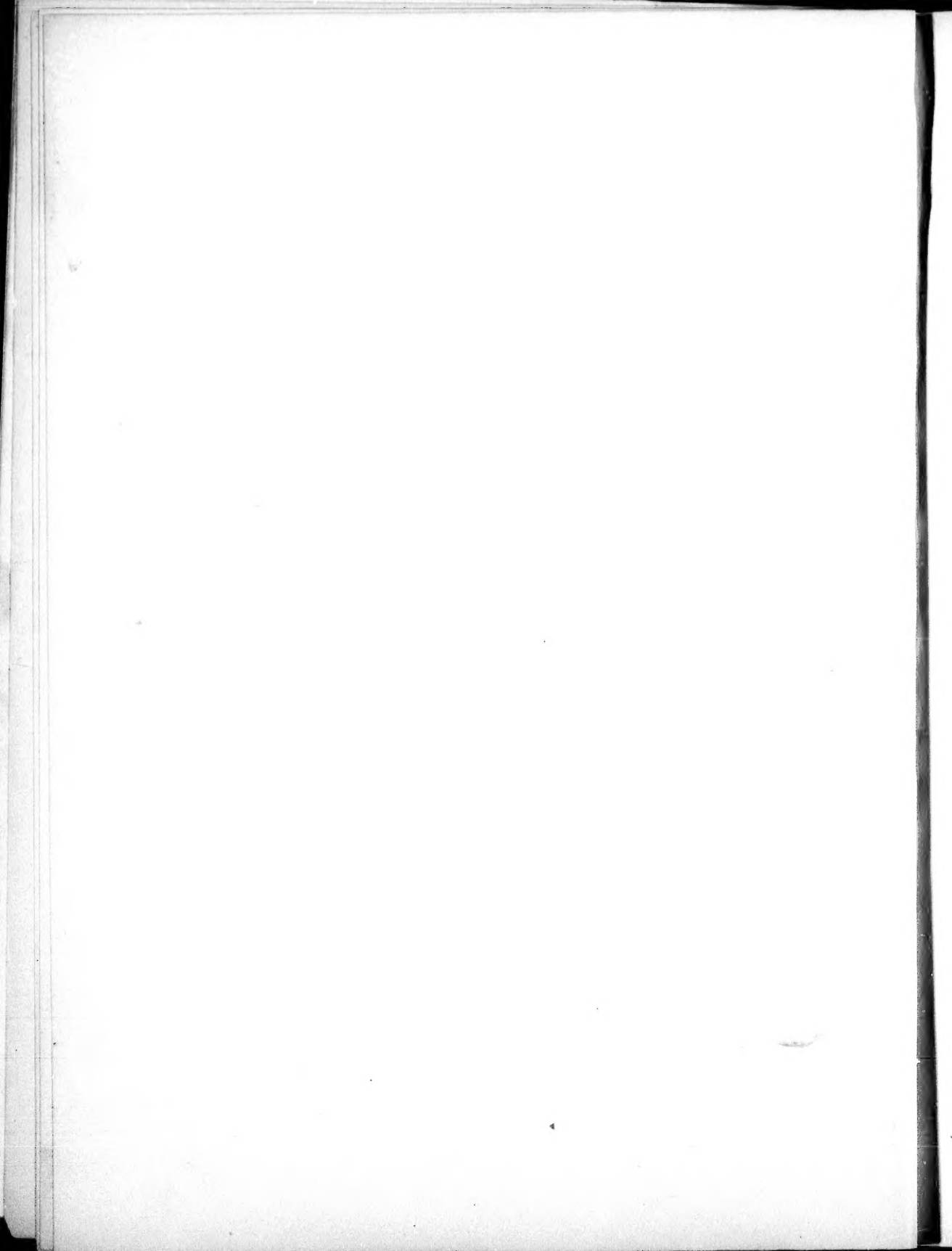
The Bill of Complaint of Sanford Fleming, of the City of Ottawa, in the County of Carleton, Civil Engineer, sheweth as follows :—

1. That your complainant being the owner of a certain parcel of land immediately adjoining the town plot of the village of Southampton, in the County of Bruce on the South, containing four hundred acres more or less, and being lots numbers fifty-seven, fifty-eight, fifty-nine, and sixty, in the Lake Range of the Township of Saugeen, in the said County of Bruce, in the year one thousand eight hundred and seventy-five, leased the same to one Henry Harmer, of the said village of Southampton, for a term of five years, at a certain rental, and by the Indenture of Lease the said Harmer covenanted to pay the taxes on the said land, and after the execution of same, entered upon said land, and worked same as a farmer.

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2. That prior to the leasing of the said lands as aforesaid, the defendant, Alexander McNabb, who resides within said village of Southampton, acted as your complainant's agent to look after the said land, was assessed for said land, as such agent, and paid the taxes on the same for some years prior to said year one thousand eight hundred and seventy-six, for, and on behalf of your complainant.





3. That after the leasing to the said Harmer, as aforesaid, the said defendant, Alexander McNabb, still continued to act as agent for your complainant, and was considered and treated by your complainant and his representatives visiting the said land as agent to look after the said land, and was consulted in reference to the same, on your complainant's behalf, up to, and since the sale of the said land for taxes, hereinafter mentioned.

4. That it was understood that when the said lease was made, that the said Harmer was to have himself assessed as occupant of the said land, as your complainant's tenant, and become responsible and liable to the Township of Saugeen therefor, and in pursuance of this understanding the said Harmer applied, as your complainant has lately been informed by him, to the Assessor for the said Township, and to the Municipal Council of said Township, to have his 10 name entered on the Assessment Roll as such tenant, but the said Assessor and the said Council neglected or refused, as your complainant has lately discovered, to do so, and the said lands have wrongly been assessed as non-resident, although occupied and worked by the said Harmer as a farm.

5. That your complainant relying on the fact that said Harmer was occupying the said land and trusting to the said Defendant, Alexander McNabb, who also undertook to see that his interest and ownership of the said lands were protected, and believing that the said lands had been assessed to him as owner in the year one thousand eight hundred and seventy-four, and would continue to be so assessed, as your complainant alleges it should have been, the Assessor for the said Township, well knowing that he was the owner thereof, neglected to see that the 20 taxes were paid on the same, and the said lands were therefore, on the seventeenth day of December, one thousand eight hundred and seventy-eight, sold by the Treasurer of the County of Bruce for arrears of taxes, and were bid in by William A. McLean, as agent for and under the instructions of the said Alexander McNabb, who was then still acting as your complainant's agent and was intervening with said sale on your complainant's behalf.

6. That the said land is very valuable, being worth from eight thousand dollars to ten thousand dollars, and the arrears of taxes for which it was sold only amounted to about two hundred and twenty dollars, and a very small portion of said land would have been sufficient to have paid the said arrears of taxes; and your complainant alleges that the said Treasurer should have sold only such smaller portion, and not the whole of said land, and could have done so at 30 said sale, and that the bidders at said sale would have paid the said arrears of taxes on said land for a smaller portion thereof, if they had not considered and believed that the same was being bought in on behalf of the said defendant, Alexander McNabb, as your complainant's agent.

6½. That the Plaintiff sold and conveyed a part of the said lands to the Wellington, Grey & Bruce Railway in one thousand eight hundred and seventy-six, and they and their lessees, the Great Western Railway, have been in occupation and possession of the said lands so sold to them ever since; nevertheless the officers of the said municipality assumed to convey the part of the said lands belonging to the said railway by the same conveyance by which they assumed to convey the part of the said lands belonging to your complainant after the aforesaid sale for taxes.



7. Your complainant alleges, and the fact is, that the amount charged as arrears of taxes for which said land was sold, was in excess of the amount properly due, and that the sale was, for that and other reasons, illegally and improperly made.

8. There was sufficient distress on the said lands during the term for which said arrears of taxes are charged for which the said lands were sold to satisfy all taxes properly chargeable against the same during that time, and this the defendants and the Collector for the said Township of Saugeen well knew and were well aware that the said land was, during all that time, occupied by the said Harmer as aforesaid.

9. That subsequently to said sale, the said defendant, Alexander McNabb, conceiving the idea of keeping the said land for his own use, entered into an agreement with the said defendant, 10 John M. McNabb, who is his son, by which it was arranged that the tax deed of the said land should be taken out in the name of the said John M. McNabb, although the purchase was made on behalf of, and the arrears of taxes were paid by, the said defendant, Alexander McNabb, as aforesaid, and the said deed was accordingly issued to the said defendant, John M. McNabb; but your complainant charges that he did not pay the said arrears of taxes and gave no consideration therefor, and the arrangement between the said defendants was made solely for the purpose of endeavouring to prevent your complainant from recovering the said lands.

10. Since the filing of this Bill the defendants have begun to cut and remove timber from the said land belonging to the plaintiff, and thereby to depreciate and damage the same, and will continue to do so unless restrained.

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Your complainant therefore prays—

1. That the said sale may be declared illegal and void, and that the said deed to the said defendant, John M. McNabb, be delivered up to be cancelled; or if the sale should be upheld, that the said John M. McNabb may be declared to be a trustee of the said lands for the plaintiff, and he be ordered to convey the said lands to your complainant.

2. That the defendants, their servants and agents, may be restrained from cutting and removing any trees or timber from the lands in question herein, and may account in value of same already cut and removed.

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3. That your complainant may be paid the costs of this suit.

4. That such further and other order may be made as to your Lordships may seem meet.



*Vol 23 November 1880*

7

#### ANSWER OF DEFENDANT, JOHN M. McNABB.

The answer of the above-named defendant, John M. McNabb, to the Bill of Complaint of the above-named plaintiff.

In answer to the said Bill, I, the said defendant, John M. McNabb, say as follows :—

1. I am the son of the defendant, Alexander McNabb, and acting for him, I procured the deed from the Warden and Treasurer of the County of Bruce, conveying the lands in question herein to me to be executed.
2. The said deed was made to me only as trustee for my co-defendant, and I now hold the said lands solely as trustee, for the benefit of my co-defendant.
3. I deny that the said deed was taken in my name instead of in the name of my co-10 defendant, for the purpose of endeavouring to prevent the plaintiff from recovering the said lands, as alleged in the ninth paragraph of said Bill, or for any improper purpose whatever.
4. I am informed, and believe, and charge that the defendant, Alexander McNabb, was not the agent for the plaintiff, and had not charge of the said land for him, as alleged in the Bill, or otherwise.
5. I believe and charge that the proceedings connected with the said sale were lawful and regular, and that the said sale and conveyance made to me are good and valid.
6. And I pray to be hence dismissed with my costs.

*Vol 23 November 1880*

#### ANSWER OF DEFENDANT, ALEXANDER McNABB.

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The answer of the above-named defendant, Alexander McNabb, to the Bill of Complaint of the above-named plaintiffs.

In answer to the said Bill, I, the said defendant, Alexander McNabb, say as follows :—

1. I deny the allegations contained in the second and third paragraphs of said Bill, and I deny that I ever undertook to see that the plaintiff's interest and ownership of the said lands were protected as alleged in the fifth paragraph of said Bill.
2. I admit that the said lands were sold by the Treasurer of the County of Bruce for arrears of taxes, on the seventeenth day of December, one thousand eight hundred and seventy-eight, and were purchased for me by William A. McLean, in the said Bill mentioned; and I duly paid therefor the sum of two hundred and nineteen dollars and fifty-five cents; but I say I was not 30 present at such sale.

li

3. On the eighteenth day of December, one thousand eight hundred and seventy-nine, the said lands not having been redeemed, the same were, at my request, conveyed by the Warden and Treasurer of said County of Bruce, to my co-defendant, who is my son, but such conveyance was only made to him as a Trustee for me, and he now holds the said lands for my benefit.

4. The said conveyance was duly registered in the proper Registry Office on the sixth day of January, one thousand eight hundred and eighty.

5. I deny that said deed was taken in the name of my co-defendant for the purpose of endeavouring to prevent the plaintiff from recovering the said lands, as alleged in the ninth paragraph of said Bill, or for any improper purpose.

6. I am ignorant of, and deny that there has been anything irregular or improper in the<sup>10</sup> proceedings for the assessment and sale of said lands.

7. I pray to be hence dismissed with my costs of suit.

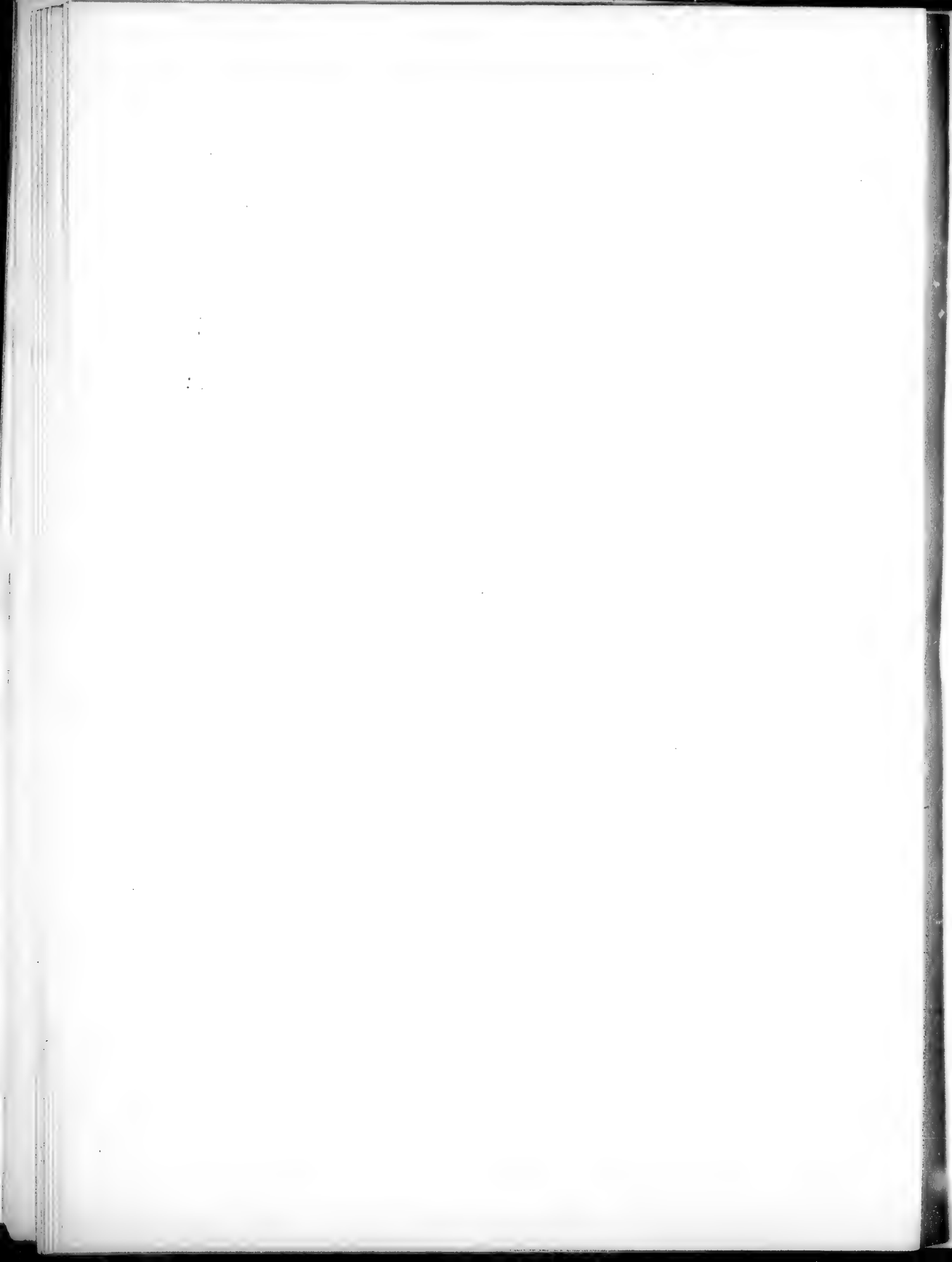
*Filed 11<sup>th</sup> April 1881*

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**JOINDER.**

The Plaintiff joins issue on the answers of the Defendants.





## EVIDENCE.

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Counsel for plaintiff, J. A. Boyd, Q.C., and E. H. D. Hall.

Counsel for defendants, T. Ferguson, Q.C., and H. P. O'Connor.

Plaintiff puts in his patent "A," 24th March, '74, and also patent, 8th October, '74, "B."

ALEXANDER McNABB, *Defendant, sworn for Plaintiff*, testified as follows :

BY MR. BOYD.

Q.—How long have you owned this land ; these four lots ? A.—Since the time I was Crown Lands' Agent ; I was appointed in '51 ; lots along lake shore ; I don't know them as a block of land, but I know them passing along the lake shore.

Q.—And you have known Sandford Fleming in connection with them as the owner ? A.—I 10 know he had two lots—David, his brother, had two, and that David assigned his right to Sandford ; I heard so.

Q.—Had you anything to do with paying the taxes at any time on these lots for Fleming ? A.—I wish to explain the evidence I gave before ; that is, a matter I have cleared up a little, which is fresh in my memory.

Q.—Had you anything to do with paying taxes on any of these lots for Mr. Fleming ? A.—I think I must have paid it some time or other for him ; it is so many years ago, that I can't recollect now.

Q.—In '74 you paid taxes for him ? A.—Yes ; when I was examined before the Master I said I had no recollection of the transaction ; there was a Treasurer's receipt, and I could not 20 account for it ; and, after going home, I looked up the letters, and I found the way it was paid ; it was a letter from Mr. Hall, of Peterboro, asking me if I would pay the taxes on these lots and draw upon him for the amount. It enclosed a letter—Mr. Hall's letter enclosed a letter from Sandford Fleming, asking Mr. Hall to pay the taxes or settle the taxes, and Hall's letter was asking me if I would settle and draw upon him for the amount ; I believe the taxes were in arrear at that time.

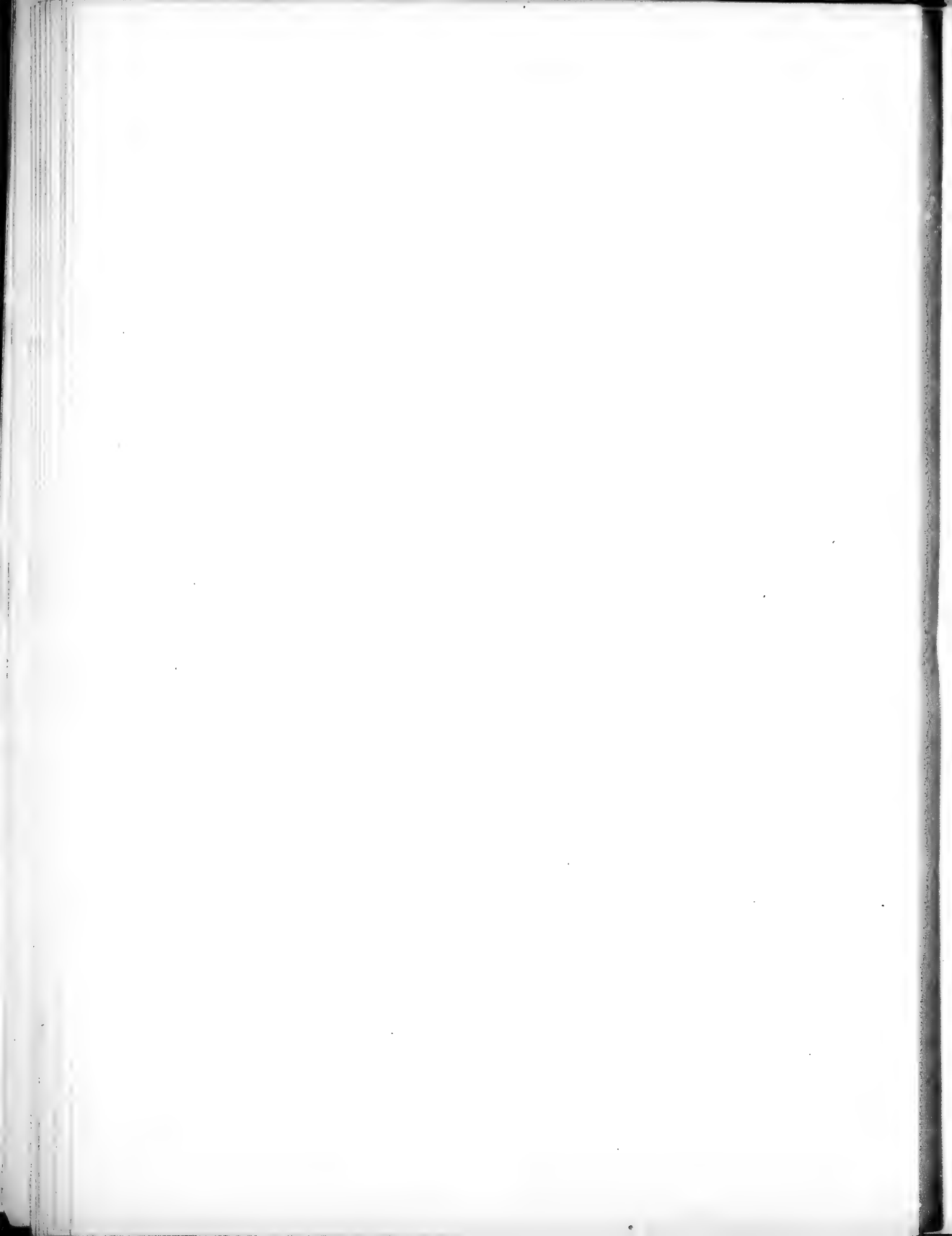
Q.—Did you get these notices before paying the taxes at this time ? A.—I think these must have been enclosed to me by Mr. Hall. They are filled up by the Township Clerk ; they are the Township Clerk's writing at the head in both ; his name is John Eastwood ; he is now 30 dead ; I recognize that as his writing (to the notices).

Q.—These, you think, were sent to you by Mr. Hall ? A.—I think so.

Q.—Don't you think you got them and sent them to Hall originally ? A.—No, because the letter from Fleming to Hall says they had been lying on his desk for some time.

Q.—I see the notices "C" and "D" are made out to Mr. David Fleming, Mr. Alex. McNabb, agent ; you are that person, Alex. McNabb ? A.—Yes ; but the man had no authority to put my name.

Q.—Did you get this receipt for payment of taxes, "E" ? A.—I never saw this before ; it was presented to me at the examination ; it didn't come to me direct ; it was given by Mr. Sproat, the land agent.



Q.—Did you not see it and send it down? A.—No; there was a letter enclosed, as near as I recollect, when writing Mr. Sproat, enclosing a letter of Mr. Hall, asking for a receipt; it may have come to me direct, but I know I got a letter from Sproat in answer to mine, intimating he had cashed my draft on Mr. Hall and paid the taxes.

Q.—You have no distinct recollection about this at all? A.—Till I saw it before me there.

Q.—It may have come to you, and it may not have come to you? A.—I think not.

Q.—You paid the money for which "E" is a receipt? A.—I drew upon Hall.

Q.—Your memory is defective, is it not? A.—It is.

Q.—That is your signature to "F"? A.—Yes.

Q.—Now, on reading that letter, have you any doubt "E" is the receipt which is referred to 10 in that letter—Treasurer's receipt for \$54.88? A.—No.

Q.—Did you interest yourself in recommending tenants to Fleming for these lands? A.—Many years ago I might have done so; yes.

Q.—I mean about year '74? A.—I don't think so; not so late as that; it is very hard to recollect.

Q.—Now, on reading your letter of Southampton, 5th March, '74, do you doubt that you interested yourself at that time? A.—I should think not.

Q.—You had forgotten that? A.—Yes.

Q.—It has left your memory? A.—Yes.

Q.—No doubt there was such a person as McNabb—not a fiction? A.—Oh no.

20

Q.—Had Fleming any other lots here than these four? A.—Not that I know of.

Q.—Why did you speak of them as farm lands? A.—Because they were next the town I suppose; but they weren't part of village lots.

Q.—Crops were raised on them? A.—Yes; a large clearing; I couldn't say how much clearing; Fleming made some improvements.

Q.—Recollect anything about circumstance that hay was cut and removed off the farm lands by Connaway and a man named Wetherall? Do you remember any thing about the details of that? A.—No.

Q.—Did you afterwards collect the money from Mr. Connaway, for Mr. Fleming, for that hay? A.—There was something, but I can't really recollect.

30

Q.—That is your signature to "G"? Yes; letter. 14th August, '74; John Eastwood, of Port Elgin, was the Clerk of Township, not Assessor; I think it is with reference to enabling to settle up some money with the bank.

Q.—Reference was made to you for reason that you had knowledge of it, and Eastwood for same reason, that he knew it? A.—Yes.

Q.—Reference was made to Harmer? A. Yes; I seen him working there.

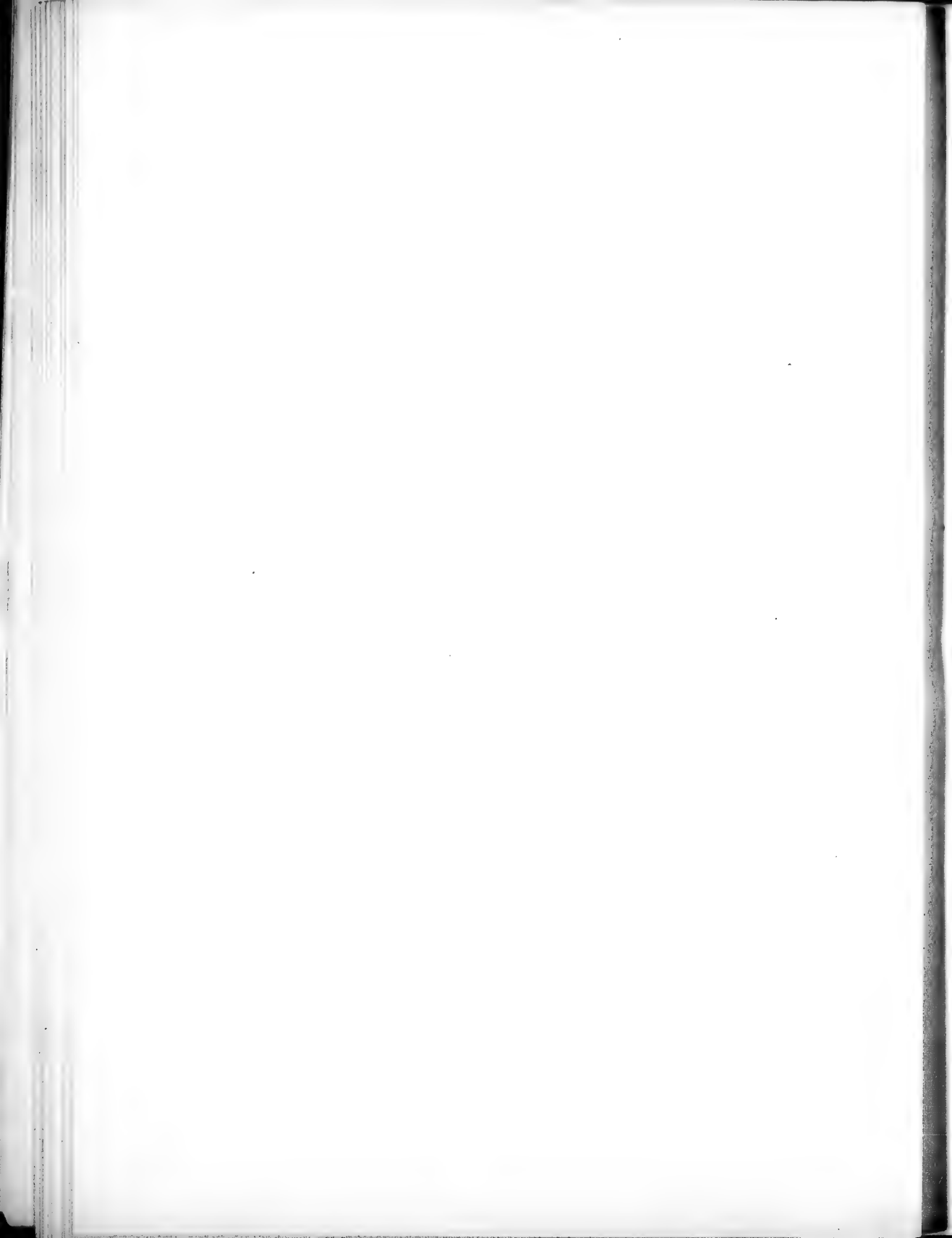
Q.—You knew he was a tenant of Fleming's? A.—Yes.

Q.—Did you know Harmer yourself? A.—Very well.

Q.—That is reason they should write to John Eastwood? A.—Yes.

Q.—Why write John Eastwood? A.—Because he was in a position to be able to find a 40 purchaser; he was a man well known.

Q.—"H" is another letter regarding the same thing? A.—Yes; 19th June.



Q.—In '74 you put value of those lots at \$30 an acre, are they worth as much now? A.—No; lands are depreciating a good deal; it is very hard to say what they are worth now.

Q.—You wanted \$4000 for half? A.—Yes, at that time; but land has depreciated since.

Q.—Were they worth \$8000 in '75? A.—\$20 an acre.

Q.—Worth that at least? A.—Yes.

Q.—You were prepared in fact to accept ten acres each and pay the taxes, were you not? A.—Yes.

Q.—And you instructed your agent who purchased to go down as low as 10 acres in order to pay the taxes? A.—Yes, in event of competition.

Q.—You were willing to pay the taxes for 10 acres on each lot? A.—Yes.

Q.—What year did Harmer go on there? A.—I couldn't tell you.

Q.—You said in '74 you thought he was there? A.—I never had any conversation with the man on the subject till last summer

Q.—You knew him? A.—Yes.

Q.—And knew he was on the lot? A.—Yes; I saw him working on it.

Q.—When you speak in one of your letters of sending one of the assessment notices, do you not refer to these "C" and "D." A.—Yes.

Q.—Here is another letter speaking of sending assessment notices; that is your writing and your signature? A.—Yes; to K. 4th April, '74.

Q.—How much clearing was there on these lots? A.—Considerable clearing.

Q.—How many acres, speaking roughly? A.—I couldn't say.

Q.—Some building on them? A.—I was never on the farm properly speaking till last summer, and the tenant then had a lean-to to shelter some grain he was then cutting.

Q.—Who was that tenant? A.—Harmer.

Q.—You took an ejectment suit against him? A.—Yes; my son did.

Q.—You are aware Harmer had a barn which was burnt on the place? A.—I never was on the place.

Q.—Had you not heard that? A.—I heard that there had been a building burnt, but I didn't know what it was, whether a house or barn, or what it was.

Q.—When did fire take place? A.—I don't know.

Q.—Was fire before or since sale? A.—Before.

Letter "L" here put in, 3rd April, '74.

Q.—Were Parker and Davis adjoining proprietors? A.—Yes; they were in the town proper of Southampton.

Q.—This property is quite close to Southampton? A.—Only a road allowance between.

Q.—Was that the arrangement you proposed making with tenants who took the land, that they were to pay taxes? A.—I suppose so.

Q.—That was the usual way? A.—It is the usual way; it is the way I do myself.

Q.—You know the Great Western run through all the lots, don't they? A.—Yes; they run through three lots, and just corners one of them—57.

Q.—They have taken a piece of that one too? A.—A very small piece, and they run 40 through the other three.



Another letter (reading it to witness).

Q.—That is your signature I suppose? A.—Yes; to "M," 12th February, '74.

Q.—It must have been in February '74 the Company were putting their road through there apparently. A.—Yes.

Q.—I see a great many references in your letters to Mr. Sproat, is he a relative of yours? A.—Yes; I think he was one of the first directors: before the company joined the Great Western, one of the old Wellington, Grey and Bruce directors.

Q.—The Wellington, Grey and Bruce took the road and the Great Western leased from them? A.—Yes.

Q.—This road cuts up three lots pretty badly I should judge from your letter? A.—Yes. 10

Q.—Do you recognize this map "N," as the lie of the lots and the way the railway cuts them? A.—Yes.

Q.—Where is the clearing? A.—There is good improvement on 57; and I saw the clearing where they ran through 60 and 59.

Q.—How many years has Harmer been there? A.—I don't know, I never saw the lease.

Q.—You know of his being there in '74? A.—Yes.

Q.—He was there and you had to eject him after your tax sale? A.—Yes.

Q.—You knew he had a lease? A.—I heard so.

Q.—You heard of it before the sale? A.—Yes.

Q.—Who is "Wetherald." A.—A baker in Southampton at the time. 20

Q.—Remember Hall coming to see you after the tax sale and before you had got your tax deed. A.—Yes; he was driven up to front of house by Mr. Harmer.

Q.—Hall is a relative of Fleming's? A.—Yes.

Q.—He was acting for him in the matter? A.—Yes.

Q.—He was sheriff of Peterboro wasn't he; that is Mr. Hall? A.—At one time.

Q.—And was he then acting in Fleming's interest in coming to see you? I understood he came to see me not about the land.

Q.—Was he acting in Fleming's interest at the time he came to see you? A.—I understood so.

Q.—Had he any talk with you about the land? A.—Nothing more than he said he 30 had made some arrangement with Mr. Harmer about building a barn.

Q.—Did he ask you anything about Harmer? A.—No.

Q.—What further occurred between you? A.—I tell you what he came to see me about was a matter connected with a former loan that I had.

Q.—What was the conversation about this land? A.—Nothing about the land.

Q.—Excepting he told you he had made a fresh arrangement with Harmer about building a new barn? A.—Yes.

Q.—The barn had been burnt down at that time? A.—Yes. I remember that I considered Harmer was doing very well, judging from the improvements he had made on the lot.

Q.—You thought Harmer was doing very well, and was a good tenant? A.—Yes. 40

Q.—And you told that to Mr. Hall too? A.—Yes.

Q.—But you didn't tell Mr. Hall that the land had been sold for taxes? A.—No.





Q.—Why? A.—I don't see why I should have told him.

Q.—Why didn't you tell him? A.—Because I considered that it was a matter of my own; that it was my son's, because it was them altogether that bought it, in one sense, as I explained before that the money was not my own.

Q.—You didn't tell him at all events? A.—I didn't.

Q.—You knew he would have paid the taxes at once, if he had known there would be a sale? He wouldn't have let this \$8,000 property be sacrificed for \$200? A.—I presume not.

Q.—You were afraid you might be redeemed if you told? A.—Yes.

Q.—You knew that Harmer who was with him, was the man who should have paid the taxes; being tenant it was his business to pay the taxes? A.—I may have supposed so; but I couldn't say so without seeing the lease.

Q.—It was your belief that Harmer was the man to pay the taxes? A.—Yes. 10

Q.—It was your belief then that Harmer should have paid the taxes? A.—I don't know that I did, he told me afterwards that he hadn't to pay the taxes.

Q.—What was your belief at that time? A.—I supposed that was the way he held it.

Q.—It was your belief and opinion then that Harmer was the person to pay the taxes? A.—I supposed that was the way he held it.

Q.—And yet you told Hall, Harmer was doing very well, and a very good tenant? A.—I don't know as I used the word "good tenant." I just said one word, that he was doing well; meaning from that, that he was making good improvements.

Q.—You knew Harmer was a tenant there, and you knew his barn had been burnt down? A.—No. 20

Q.—They were telling you he had made arrangements to build a new barn? A.—He told me he had made some arrangement with him to build a new barn?

Q.—You knew the barn had been burnt down? A.—Yes. I don't know about that barn being burnt; I can't say; I never saw that barn.

Q.—Without knowing the barn was burnt down; you merely knew they were going to build a fresh barn? A.—A new barn.

Q.—Had you not heard the other barn was burnt down? A.—I have no recollection of that barn burning down until very lately.

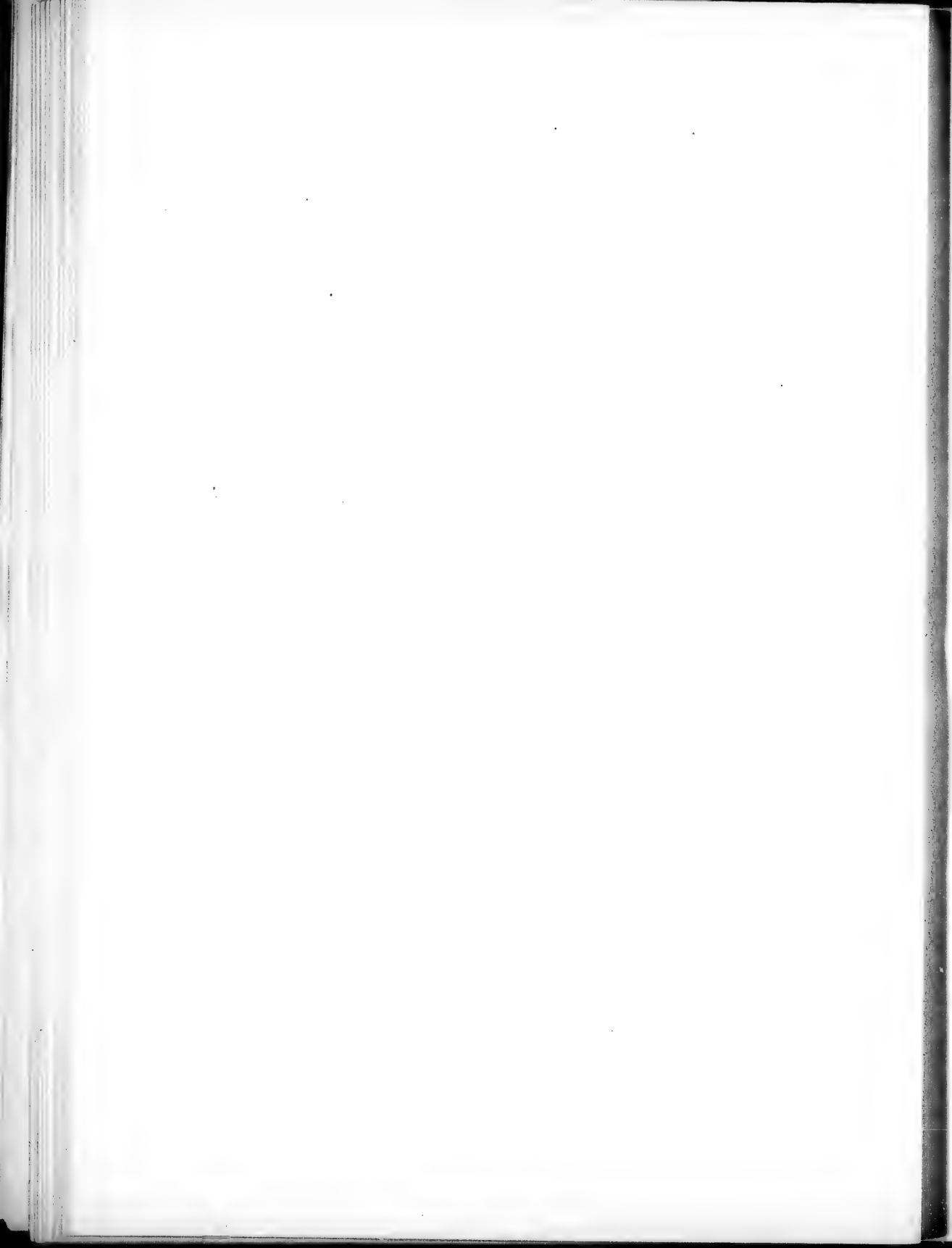
Q.—You recommended Harmer then as a good tenant? A.—No, I did not. I merely said that he was doing well; that is judging from the improvements he was making on the front of the lot; passing by there frequently. 30

Q.—But he was doing very ill in not paying the taxes? A.—I don't know who was to pay the taxes; I wouldn't say positively he was to pay the taxes; because he told me afterwards he wasn't to pay the taxes.

BY COURT.

Q.—You understood at that time that Harmer was to pay taxes, and that it was a term of his holding that he was to pay them? A.—I never saw the lease, so I don't know; but I suppose that would be the way he held the land.

Q.—What time was that you saw Hall up there? A.—Sometime in '78; in September 40  
sometime.



Q.—Harmer was there at the time with Mr. Hall? A.—Yes he was driving him.

Q.—You knew the barn of course was to provide for that years' crops I suppose? A.—I suppose so; I don't know what barn they made.

Q.—What crops did Harmer produce on that place besides hay? A.—When I saw it, he had wheat; that was last summer; I didn't see him in '79.

Q.—Did you know anything about this land being assessed as resident land before '74? A.—I know it now from having got a certificate from the clerk; but I didn't know it then; I have found out since.

Q.—When did you know that it was assessed as resident land? A.—When I got a certificate from the clerk. 10

Q.—Was that before or after the sale? A.—Lately.

Q.—You say it was well known in the neighbourhood that Harmer was occupying the land; that is the fact is it not? A.—It was well known in our village.

Q.—That is the neighbourhood of the place? A.—Yes.

Q.—The land was known as "Burnt Corners" or Fleming's land? A.—Yes.

Q.—Why called "Burnt Corners"? A.—The land was very low and swampy; and in early days of settlement it took fire and burnt all around there; it was cedar.

Q.—What is assessor's name? A.—William Murker.

Q.—He is dead, I believe? A.—Yes.

Q.—You knew Mr. Hall was the person to pay the taxes, did you not? A.—No, only from 20 what Harmer told me last summer.

Lease put in admitted "O" dated 2nd April, '75, Fleming to Harmer.

Q.—Now did Hall tell you he was arranging for a fresh lease with Harmer? A.—He didn't speak about a fresh lease, only he said about a barn.

Q.—When examined before, you spoke about this, "he told me he had given Harmer a fresh lease;" you had forgotten that? I had forgotten that, yes.

Q.—And that Harmer was to put up a new barn to cost \$200? A.—Yes.

Q.—You told him Harmer was getting along well? A.—As they were going away; driving away, I just made the remark, that he had done well, judging from the improvements he had made.

Q.—But did you tell him that? A.—I told him that. 30

Q.—That you judged Harmer was getting along well because of the improvements? A.—No.

Q.—You said simply that Harmer was getting along well? A.—Yes.

Q.—And your reason for saying that was judging from improvements you had seen? A.—Judging from improvements I had seen on the road.

Q.—Cunningham, I understand, has left your farm and is living in the village? Remember Cunningham being there? A.—Yes; Cunningham was brought up by Fleming and placed upon the land.

Q.—Did Cunningham commence to improve and clear as early as '62? A.—I suppose so. They were brought up there shortly after they got the land. 40

Q.—Did you conclude this matter and make an arrangement with Mr. Smith? A.—I can't remember from '66.



Q.—As I judge from this "Q," improvements were going on, clearing up and so on during all these years? A.—Yes.

Q.—You can't give me any estimate of the aggregate of the clearing? A.—No, I never was on the place.

Q.—Remember getting a letter from Mr. Hall? A.—Yes.

Q.—And was this "R," the answer you sent? A.—Yes; 10th July, '80.

Q.—You rather repudiated the idea then that you were the owner—it was your son? A.—He came out to my son.

Q.—But now you have everything to say in the matter, haven't you? A.—No.

Q.—Your son is trustee for you isn't he? A.—No.

Q.—He holds for you? A.—He holds the land in his own name.

Q.—But we started this case with the idea that your son had no interest in this land—that it was you had all the real interest? A.—I found it was going to be business I couldn't attend to, and I gave it and allowed the tax deed to issue to him.

Q.—This "S" is the letter, and I suppose your son consulted you before writing, did he? A.—Yes.

By COURT—You knew the answer your son was giving? A.—Yes.

By Mr. FERGUSON:

Q.—You said in a way that you paid the taxes for '75, and you mentioned to my learned friend that you got a letter from Mr. Hall, is that "T," the letter? A.—This is the letter.

Q.—And is that the enclosure "N"? A.—Yes.

Q.—Do you know what that "enclosed" was in the letter Fleming to Hall, or did anything come in Hall's letter besides that? A.—Unless it was little slips giving the amount of the taxes to pay.

Q.—These have been already put in? A.—I think so.

Q.—You told my learned friend you paid the taxes in '75, pursuant to the little slip; and those letters that I have now put in? A.—Yes.

Q.—Did you actually pay the money yourself, or how was it done? A.—Done by draft through Mr. Sproat on Walkerton. My draft on Mr. Hall. I drew on Hall through the Bank agent Mr. Sproat here, and I think I received a reply from Sproat saying it was all right and honored.

Q.—Is that "V" what you received from Sproat? A.—Yes.

Q.—Now after that transaction of '75, had you any communication with Mr. Hall or Mr. Fleming about this land for a long series of years? A.—No; not that I am aware of; there might have been some correspondence with David Fleming about two of the lands, but I can't recollect it.

Q.—Is that the Mr. Fleming with whom you had such large transactions—endorsements? A.—Yes.

Q.—Do you remember seeing that "W"? A.—Yes; this is a letter I received from Mr. Hall, dated 8th July, '80.



Q.—Do you know letter "X"? A.—Yes; it was handed to me by young Mr. Fleming—a son of Sandford Fleming, dated 17th June, '80.

Q.—It was delivered to you by whom? A.—By young Mr. Fleming.

Q.—Is he Frank Fleming? A.—I can't say.

Q.—Whose is this letter "Y"? A.—Mr. Sandford Fleming's, dated 21st October, '74.

Q.—You wrote a letter to David Fleming in regard to the transaction, didn't you? A.—Yes.

Q.—And it is mentioned in that letter of Mr. Sandford Fleming's? A.—Yes.

Q.—Now from the time you received this letter—last letter—did you do any business of any kind for Mr. Sandford Fleming, or look after any property for him? A.—No.

Q.—You weren't, as I understand, personally present at the sale of these lands for taxes? 10  
A.—No.

Q.—I understand Mr. Maclean made the purchase for you? A.—I wrote him asking him to buy them for me.

Q.—Did you give any instructions to Mr. Maclean that were in writing? A.—A letter to him; it is usual either to buy a whole or portion.

Q.—You weren't at the sale yourself? A.—I wasn't at the sale.

By MR. BOYD :

Q.—I think you told me you instructed Mr. Maclean that you were willing to take 10 acres of each lot; he bid down to 10 acres, and to pay the taxes for that? A.—Yes.

Q.—You didn't expect any such good luck as to get the whole lands? A.—We didn't.

Q.—What trees have you been cutting on this 400 acres; you have been cutting some, I 20  
understand? A.—No, I have not.

Q.—Some persons with your authority? A.—My son gave permission to a man to go and cut some ties.

Q.—Know how much has been cut? A.—I couldn't say.

Q.—But some timber has been cut? A.—Yes.

Q.—Over 200 ties cut? A.—I can't say.

Q.—Character of the timber? A.—Cedar.

Q.—Your instructions to Maclean were to buy these lands; it was this land you were wanting him to buy? A.—Yes. 30

By MR. FERGUSON :

Q.—Are these the instructions, "Z," you gave to Mr. Maclean; these are the very papers, are they? A.—Yes.

By MR. BOYD :

Q.—Why didn't you wish to be known in this matter—"I don't want to be known"?  
A.—I don't suppose that if it were known the parties would have communicated it to me; I don't know any reason for it.

Q.—You can't imagine any reason why you didn't want to be known? A.—No, I can't.

JOHN M. McNABB, sworn for Plaintiff, testified as follows :





By MR. BOYD.

Q.—The tax deed was taken out in your name, I believe? A.—It was.

Q.—It is in your name still? A.—Yes.

Q.—Since then you have commenced an action to eject Harmer? A.—I did after I had had the deed.

Q.—Did you eject him? A.—I did.

Q.—What crops did Harmer raise there to your knowledge? A.—I was never on the land but twice; he raised hay, some oats and wheat, and what I saw on the road was potatoes too.

Q.—About how much was cleared on the land? A.—I couldn't say.

Q.—It was well known that Harmer was in possession, occupation of the land? A.—Around 10 Southampton it was.

Q.—It was well known? A.—Yes.

Q.—You knew at all events he had been growing crops on the land for the last five years?

A.—Yes.

Q.—That he was there as tenant of Mr. Fleming? A.—I understood so.

Q.—Did you hear of the barn being burnt? A.—I have no recollection of the barn being burnt, I know nothing about that.

Q.—Why wasn't the land assessed to Harmer as the occupant? Did you make any inquiries about that? A.—After I had got the Deed I had a conversation with Harmer, and he told me he had not to pay the taxes.

Q.—Did you make any inquiries why the land was not assessed to Harmer? Did you know 20 for instance up to '74, including '74, the land had been assessed as resident? A.—I didn't know; since then I have found out.

Q.—That the land up to '74 inclusive was assessed as resident land? A.—Yes.

Q.—Did you make any inquiries to find out why it was not assessed as resident while Harmer was there? A.—Since I got the Deed I have, but not before.

Q.—But you knew Harmer was occupying it before you got the Deed? A.—To the best of my knowledge, yes I did.

Q.—Did you speak to the assessor or collector about it? A.—I spoke to the assessor.

Q.—You knew Harmer was there growing crops? He told you so did he not? A.—He told 30 me it was non-resident and he had nothing to do with it.

Q.—Did you not know Harmer was there and growing crops? A.—Nobody told me.

Q.—The evidence here is that a man told you that the stuff Harmer would grow on the place would be taken off before collector would come round? A.—It was in reference to what was in the ground.

Q.—It is your evidence I am reading from, that you were told the assessor said the stuff Harmer would grow on the ground would be taken off before the collector would come around? So that the assessor knew Harmer was growing stuff there? A.—Yes.

Q.—Who is present assessor? A.—Trapple.

Q.—When appointed? A.—I couldn't tell you?

Q.—Was it before the sale? A.—Since the sale.

Q.—Who was the assessor before Trapple? A.—Murker I understand. 40



Q.—Where did Trapple live ? A.—Township of Saugeen.

Q.—And Murker lived ? A.—At Saugeen.

Q.—When did Murker die ? A.—I couldn't tell you ; I only understood within a short time that he was dead.

Q.—And you understood as I see from your evidence, that the reason that Hanner was not assessed, was that the crops would be taken off before the collector would come around ? A.—Yes.

BY COURT.

Q.—That is you understood lately ? A.—Lately.

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Q.—Which assessor was that ? A.—Trapple.

Q.—You knew Harmer had crops of hay on this land ? A.—I did from passing it.

Q.—And that he stored it up on the land and kept it there ? A.—I don't know where he kept it.

Q.—You know that he had a place to keep and stow hay ? A.—I saw it when I went in last summer.

Q.—You knew he had cattle on the land ? A.—Merely from hearsay.

Q.—You knew the Great Western ran through his land ? A.—Yes.

Q.—How much land is taken up by the Great Western ? A.—I couldn't say.

Q.—About how much ; seven or eight acres ? A.—I should judge about five.

Q.—These lots are all fenced ? A.—All the 400 acres are enclosed by a fence.

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Q.—Not all around it ? A.—In front they are.

Q.—Do you not know that they are fenced all around it ; or do you know ? A.—I do not know.

BY COURT.

Q.—Would they be fenced on lake side ? A.—No, there is a fence along the front, and on the sides, and along the railway track.

Q.—Except along lake shore, isn't the whole block 400 acres enclosed by a fence ? A.—I couldn't say, because I was only twice in my life over the place.

Q.—Along all the boundary that you have there is a fence ? With the exception of the lake shore, I should say so.

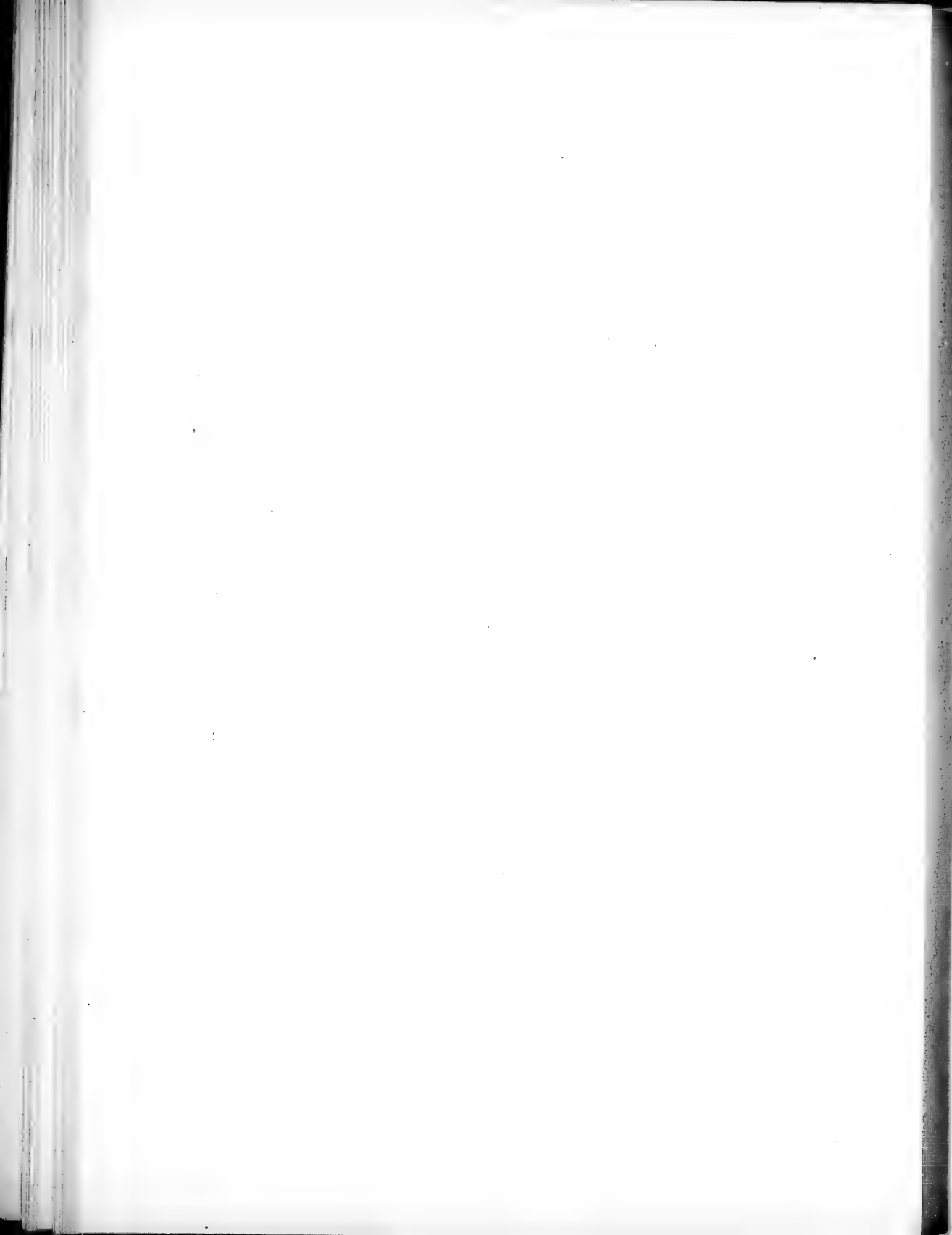
Q.—The railway part is fenced from the other ? A.—Yes.

Q.—When was that fence put there ; at the time the railway took it ? A.—I should say so, in '73.

Q.—When did the railway take possession ? A.—The railway commenced running in '72, and I should judge it was bought about that time ; the fall of '72.

BY MR. FERGUSON.

Q.—Had you ever any conversation with Harmer as to who was to pay the taxes ? A.—After the sale.



HENRY HARMER, sworn for Plaintiff, testified as follows :

By MR. BOYD.

Q.—You were the tenant of this land I believe ? A.—Yes.

Q.—Did you take it first when this lease was made ? A.—Yes, I took it the first year.

Q.—In '75 ? A.—I was keeping store at the time.

Q.—Your first taking of it was in '75 was it ? A.—Yes.

Q.—Did you occupy it from that time on until this action of ejectment was brought against you ? A.—Yes.

Q.—And that was brought by Mr. John McNabb after the Tax Deed ? A.—Yes ; eighteen months or more afterwards.

Q.—What clearings was there on the place ? A.—About seventy-five acres. 10

Q.—Was there a part of that on each lot ? A.—Yes, some clearance on each lot.

Q.—What crops did you raise there from that year ? A.—Sometimes I had nine or eight acres of wheat ; ten or twelve acres of oats, and two or three rows of potatoes, and sometimes a lot of hay.

Q.—Every year you had crops ? A.—Every year except the first year. I didn't get much the first year. I couldn't get on to the place.

Q.—But '76, '77 and '78 you had those crops you speak of ? A.—Yes.

Q.—Had buildings I suppose ? A.—No buildings when I took it except some log shanty down in the bush, and a stable ; and then I took and built a barn about 60 feet long and 30 feet wide—a post barn—frame barn. 20

Q.—What became of that barn ? A.—It got on fire and was burnt down.

Q.—When ? A.—About the third year that I was on it. I have had two threshings since that barn was burnt.

Q.—Some time in '78 it was burnt ? A.—Yes.

Q.—The same year that the tax sale took place, and the tax sale took place in '78, December ? A.—I have had two threshings since.

Q.—It would be in '78 then ? A.—Yes ; I guess that would be the time.

Q.—Did you do the fencing, or was the fence there before ? A.—I fenced the lot.

Q.—What land is taken up by the track there ? A.—A little over half a mile, and 100 feet wide. 30

Q.—You don't know the acreage ? A.—No.

Q.—It is plain on the land, however, that the track is there and fenced off ? A.—Yes, it is fenced off.

Q.—And a part of each lot is taken as we have heard ? A.—It goes through three lots, but only goes on the corner of one lot ; it goes through four lots.

Q.—On which lot was your barn ? A.—Lot 59.

Q.—Was it towards the Goderich lot or towards the other end of the lot ? A.—Nearly half way down.

Q.—Where was the clearing—about the centre of the lot ? A.—Yes, and in '57 as marked, and then I have got some clearing too on Lot 60. 40

Q.—McNabbs knew too, didn't they ? A.—Yes, often talked to me.



Q.—They knew you were living on this place, occupying it? A.—Well, I wasn't occupying it.

Q.—You lived on another place? A.—Southampton.

Q.—But you were farming this every year? A.—Yes.

Q.—Had you cattle on it? A.—Yes.

Q.—Did you keep cattle during the winter? A.—I kept them all the winter; I had two horses all the time, and a pair of bullocks I gave \$75 for—they were on all the time.

Q.—Summer and winter you had cattle on? A.—Most all the time—I kept pigs up there—pigs and stuff up there all the winter; but the place got burnt down and I didn't keep the biggest part till afterwards. 10

Q.—Did you keep hay there all the time? A.—All the time; I never took a stack away only just as I wanted to use it.

Q.—That was not wild hay, but hay you grew from the crop? A.—Good timothy hay.

Q.—Were you there when Hall came up to see Mr. McNabb, between the time of the sale and the deed? A.—Yes, he came to my place and I drove him up to this farm and showed him out, and then he wanted to go around and see Mr. McNabb, and I drove him round.

Q.—Did you know the land had been sold for taxes? A.—No, or I would have told him about it.

Q.—You drove Hall up to McNabb's place? A.—Yes, and he went in and sat there some little time, and he came out, and we were there together talking, and Hall asked him how I was getting along, and he said I was getting along first-rate; and he said he was going to draw out a fresh lease or something for me, because I had been telling him my lease was not drawn out right. I only got \$65 for clearings. I was telling him about this, and he said that would not be so any more, and he would draw a fresh lease. 20

Q.—What other talk was there between Hall and McNabb? A.—Just talk about like that but I cannot remember the words.

Q.—Was anything said about a barn? A.—Yes, I was to have \$200 to build a barn, because I got mine burnt down.

Q.—That was spoken of then? A.—Yes.

Q.—What did McNabb say when he asked how you were getting along? A.—He said I was getting along first-rate.

Q.—You didn't know anything, or suspect anything about the land being sold to McNabb for taxes? A.—No, not the least in the world. Never knew nothing until Mr. Fleming came up. 30

Q.—Did you take steps to let it be known that you were occupying the land, to the Council or any one else? A.—I went down to Saugeen Council and wanted them to open this road down south, and they would do nothing for me.

Q.—To the lake shore? A.—This road allowance between Lot 60 and the Government Reserve. I wanted it opened down to the burnt corner on 60.

Q.—Was that in '75? A.—No, I think in '76. I think Connaway wrote them two or three times and they would not do it; and he wrote me a letter, and I took it down and told them I wanted the part opened up from the track down to the Goderich Road. I think it was the Town Clerk; I didn't know the man, and he asked me whether I was assessed on it yet,





and I says no, I am not assessed on it, and I says I have got to pay the taxes if you assess me on it, but I will get the money back. It was before the Reeve and all the Council. They were sitting; I went to them there; Mr. Connaway gave me a letter to take down, stating I would do half the road if I could get the Township to do half. I wanted them to lay out statute labour and Reeve was willing, but Council would do nothing for me.

[This evidence taken subject to objection.]

Q.—But your saying to Township Clerk and his asking you if you had been assessed yet? Was that in presence of Council? A.—Yes; they were all sitting around a little table together.

By MR. FERGUSON.

Q.—Was it within hearing of Council? A.—Yes.

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By MR. BOYD.

Q.—The Township Clerk asked if you had been assessed yet for the land? A.—When I told him I had leased the land for five years, he asked me then whether I had been assessed for it, and I says no, I have not been assessed, and I told I was to pay taxes, and if they assessed me for it I would get my money back by taking receipt for taxes.

[This evidence taken subject to objection.]

I just went down to tell them I had taken the place, and I wanted them to let me lay out statute labor; the Council would not, but the Reeve said he didn't see why a man couldn't get 20 statute labor allowed on it.

Q.—You knew you couldn't do statute labor there in shape of work unless you were assessed? A.—No, certainly; I wanted them to do that; I didn't know what they were going to assess me afterwards.

Q.—You wished to be in a position there for the purpose of having statute labor done by you on this piece of road? A.—Yes, that is what I went for, and mostly to get the road opened.

Q.—And the Township Clerk asked you if you had been assessed yet? A.—Yes, and I told him I hadn't.

Q.—You told him what arrangement you had made about this lease? A.—Yes, I told them everything, the particulars, because I had got the lease in my pocket.

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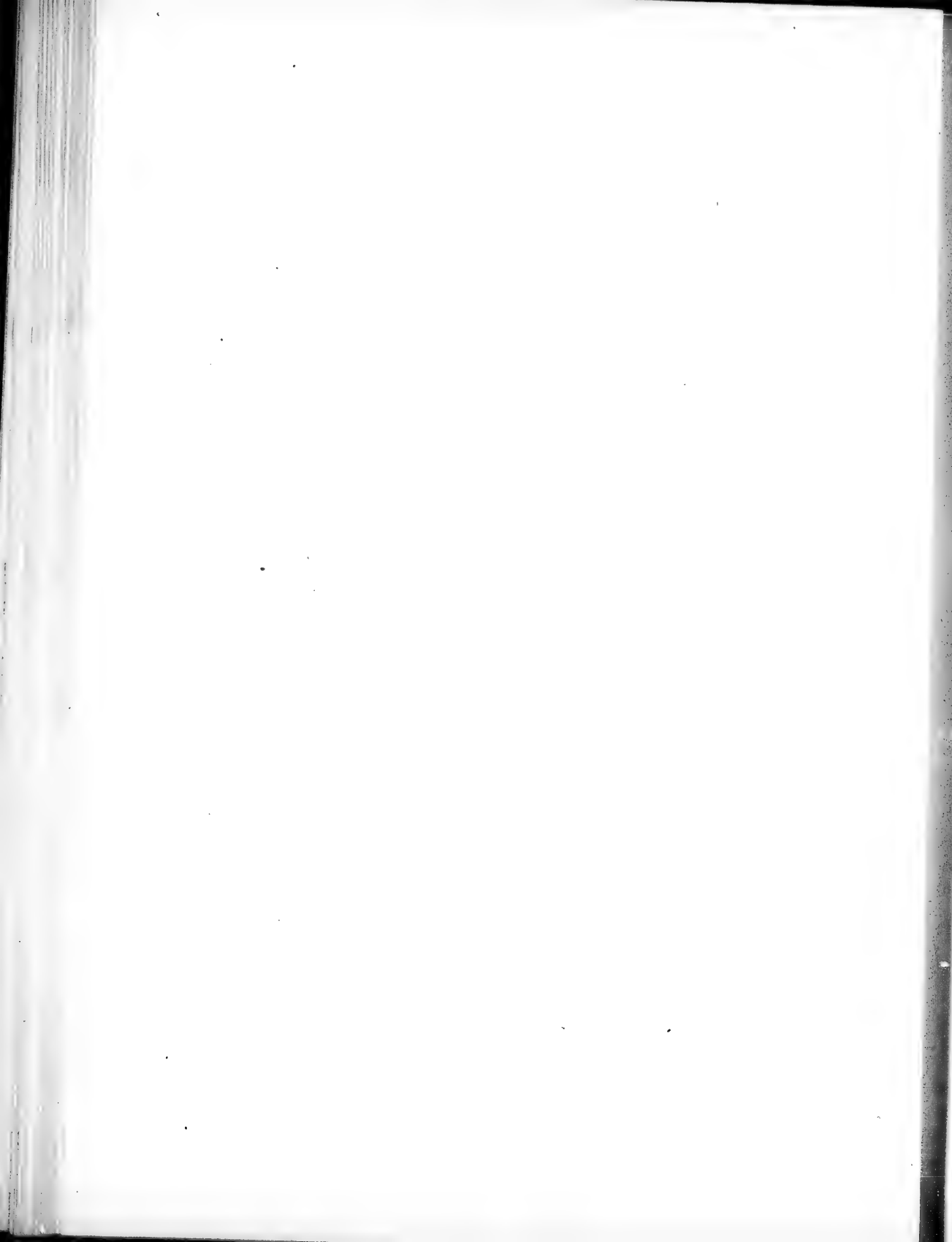
Q.—Do you know of timber being cut on that land by McNabbs or by some person? A.—Yes: some men cutting ties around there, taking them out, and I thought my lease, on running out I would look after the place myself.

Q.—When was it you saw them cutting there? A.—Last winter; all along the winter.

Q.—You mean winter of '81? A.—Yes.

Q.—Until when were they going on cutting? A.—I see some teams fetching timber out here the other day again: two loads away last week; the McNabbs; I was down there, and saw them and plenty of other people.

Q.—How many trees were cut by them? A.—I counted 207 ties; I didn't know who ordered them to go on there to cut it, and he said he had only cut 206, and I said I counted 207, 40 and he said—well, Mr. McNabb, he said, had given him leave.



Q.—When was this ? A.—In winter, before Christmas. I think.

Q.—Cedar ties, are they ? A.—Cedar ties.

Q.—How many ties would come out of a tree ? A.—Sometimes two, three or four ; larger trees go four very often.

Q.—There must be at least 50 to 100 trees cut then ? A.—Yes, quite that.

Q.—Have any other varieties of trees been cut except cedars ? A.—Those on the waggon with him were either balsam or tamarack ; I wasn't near enough to them.

Q.—To what extent has the lot been damaged by this cutting ? A.—I could not say ; there have been people cutting about a good deal.

Q.—And there is danger of fire too on account of the cutting ? A.—Where people have been 10 cutting trees down and leaving chips ; that is how people are burnt out ; the fire came through my bush and took the barn, and across the railway and took the fences down.

Q.—Would you say in figures to what extent the farm has been damaged ? A.—I wouldn't like to say.

BY MR. FERGUSON :

Q.—Have any trees been cut down by either of the Mr. McNabb's since 2nd March last ?

A.—I don't know whether it was John Donald.

Q.—Has timber been cut down ? A.—Yes.

Q.—Wasn't it you cut down this ? A.—No ; I cut some hemlock down to make a barn.

Q.—Was there a seizure of timber you cut ? A.—There has been some firewood ; two or 20 three cords.

Q.—Are you prepared to swear that either of the McNabbs cut any trees down since the 2nd March ? A.—No.

Q.—Who did ? A.—John Donald—another man, a brickmaker there.

Q.—Has the cutting been done since the 2nd of March ? A.—Last Friday I was down there and saw them on the waggon.

Q.—Felling trees ? A.—They were on the waggon in the farm.

Q.—Some timber of yours was seized and hauled away ? A.—Only some little firewood—two or three cords.

Q.—Aside from timber of yours that had been seized, did you see any timber hauled away ? 30 A.—No.

Q.—Did you see any tree actually felled down on the premises since 2nd March last ? A.—I saw them on the waggon,

Q.—Did you see anybody chop down any tree ? A.—I met men coming out of the wood bush.

Q.—Did you see anybody chop down any tree ? A.—I didn't ; but I met them coming out of the bush with timber on the waggon.

Q.—And the men you met ? A.—A man named Saxsby and John Donald, and Saxsby's brother was with the team ; they had their axes on their shoulders ; Saxsby was driving the team ; I met the team and I met them with their axes afterwards in the bush.

Q.—On these lots ? A.—Yes ; and it was either balsam or tamarack.

Q.—Was it large or small timber ? A.—Eight or nine inches.



Q.—Were they long or short? A.—No.

Q.—What did they appear to be intended for? A.—I suppose for building something.

Q.—Were the poles like scaffolding poles? A.—Heavier than scaffolding poles—some of them were about the size of scaffolding poles and some bigger.

Q.—I understand from what you told Mr. Boyd you never lived on the lot at all, you merely farmed a portion. A.—I never slept on it; we used to be there every day; I had a kind of a shanty up there, and I had a big furnace.

Q.—You went there and did work? A.—I boiled stuff there for pigs, and fed the pigs all the winter; I never slept there.

Q.—Where did you live? A.—Southampton.

Q.—It was in another municipality wasn't it? A.—Yes; in corporation of Southampton.

Q.—You lived a mile and a half from this land? A.—Where we used to get on at the rail-10 way it is a mile and a half.

Q.—It was in another municipality, Southampton? A.—Yes.

Q.—This land is in Saugeen? A.—Yes.

Q.—You told Mr. Boyd that up to a certain time you kept pigs on the place, until the time the barn was burnt? A.—Yes.

Q.—When was the barn burnt? A.—It must be in '57 or '58—I have had two crops off since the barn was built.

Q.—You know it was not '57? A.—It must be '57 or '77—'77.

Q.—Can you tell, by jogging your memory, what year the barn was burnt? A.—I don't remember the date, and I don't want to tell no story about the thing about '77 or something like 20 that, '77 or '78; I don't know which it was; I wouldn't swear to that.

BY MR. BOYD.

Q.—Did you get last year's crop? A.—Yes.

Q.—The year before? A.—Yes; I got four crops off it.

BY MR. FERGUSON:

Q.—Can you fix the year on which you say you gave notice to the Council? A.—Nearly a year after I took it, because they had been writing backwards and forwards trying to get them to open that road.

Q.—You took it in '75? A.—Yes. 30

Q.—You wanted a road pretty soon after that? A.—I wanted it right away, but I couldn't get it.

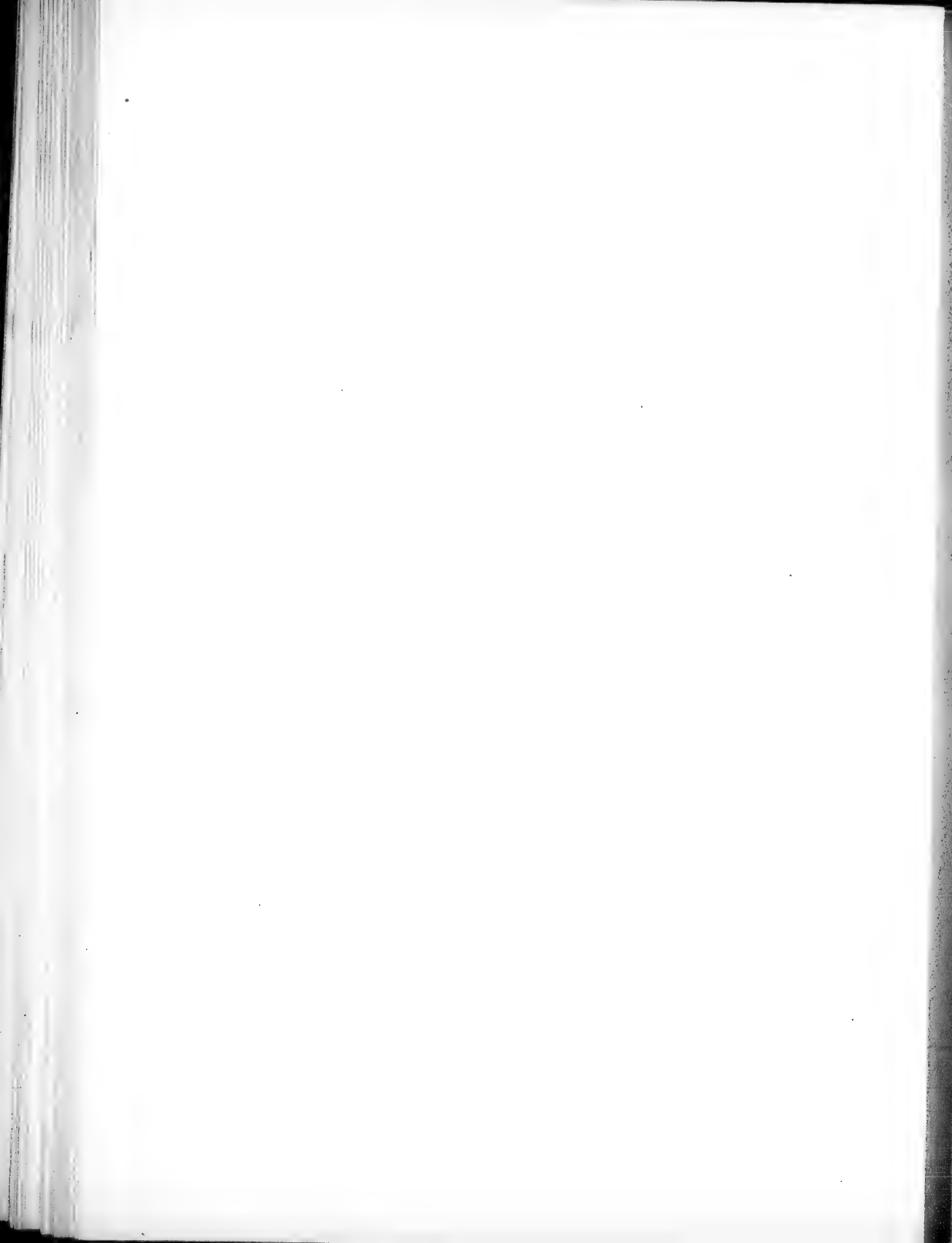
Q.—Soon after taking it, you spoke to the Council in the way you have stated? A.—Mr. Connaway wrote.

Q.—In '75 you took steps? A.—Yes.

Q.—And you told Mr. Boyd you were talking to the Council? A.—Yes.

Q.—How long after you got your lease was that? A.—Nearly twelve months; I haven't got the letter with me or I would show it to you.

Q.—Did you know the Assessor? A.—Yes; what they said was Assessor, a man named Wallace, but I never spoke to him; I never knew him till now, lately—not before; since the 40 place has been sold I knew him.



Q.—You rented a barn in Southampton from one Connaway? A.—Yes.

Q.—The stuff you raised on this place you hauled directly to that barn? A.—Yes, fetched it down; wanted it to feed the cattle.

Q.—How many acres of wheat did you ever raise on the land? A.—As high as nine one year, and eight, and so on, and seven.

Q.—Have you had a crop in the place every year since you got it? A.—The first year I didn't make much; I couldn't get into it; I had a crop every year afterwards; the second year that I put in crop, I put in \$36 worth of wheat into the field, sowed it, and I got off \$41 worth.

By MR. BOYD:

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Q.—Had you a crop there in '75? A.—Yes; only a few potatoes, carrots, and such things; no grain much, only Hungarian grass.

Q.—You had that cropped? A.—Yes, and carrots and potatoes.

Q.—There was some house on it, then? A.—Put part of the barn up that year, to put my hay in; I had about twenty acres of hay mowed the first year.

Q.—That was all the first year? A.—Yes.

Q.—How near is the nearest point of this farm to the nearest point of Southampton, where you lived? A.—The nearest point would be down to lake shore; about a mile, I should think, it is from where we lived. We couldn't get up to the farm if we went that way; it adjoins the corporation.

Q.—And that is between the 400 acres and the village? A.—Yes.

Q.—How far is the village from this road? A.—I should think not more than a mile from the land up to the village. 20

Q.—Is it the village where you lived? A.—Right on High Street, right in the village.

Q.—Is that where you were living in '75? A.—Yes; we lived there ever since.

Q.—Was that an incorporated village then? A.—Yes.

Q.—Have you any idea of where the boundaries of these four lots are? A.—Yes, every ten chains.

Q.—Is there some clearing on each of the four lots? A.—Yes.

Q.—You mean to say you had a crop growing on each one of the four lots? A.—Yes, on every lot. 30

Q.—Which lot was the barn upon? A.—59.

Q.—How much clearing do you say there was altogether? A.—I guess about seventy-five acres.

Q.—Was there about an equal amount of clearing on each of the four lots; or had one more than the others? A.—The two smallest numbers had the biggest clearing.

Q.—How wide are the lots in front? A.—Ten chains.

Q.—Did they clear any all the way across four lots? A.—Yes, right across the four lots.

Q.—Did the railway pass through the clearing? A.—Clearing up against the gates.

Q.—One of the witnesses marked clearing on each side of the railway? A.—Yes.

Q.—Are the clearings on the different lots all connected so as to form one clearing? A.—Up against the gates where clearing is, it is all pastured land.

Q.—Do you say there is clearing on 58? A.—Yes.





Q.—McNabb didn't say there was? A.—The barn was on 58—59 barn is on.

Q.—Do you say there is a clearing on 58? A.—Yes, and 57 too.

Q.—Both the others? A.—Yes.

Q.—Is the clearing all one clearing? A.—Yes, one clearing except eight acres the fire has been all through, and the trees are lying in all shapes and forms, (referring to right hand side of the map.)

Q.—Is there fencing? A.—Yes.

Q.—There is actually cleared land fenced in on each one of these lots? A.—There are two fields fenced off; one field the clearance goes down thus over two lots all into one. There is no fence between.

Q.—Is there no field that extends over three of the lots? A.—No, I don't think there is.

Q.—Is there one clearing extending over three of the lots? A.—There is a kind of a gully, 10 and that is where the fence is.

Q.—Any bush land between the two pieces? A.—No, it was not bush.

Q.—The clearing extends over three of the lots, and then another piece, eight acres from the other lot; is that the way of it? A.—Yes; it comes over three, it comes right up to the other fence.

Q.—Is there one clearing extending over the whole four lots? A.—There is clearance like —only one is pasture and the other ploughed.

Q.—Does the other clearing, except the eight acres, extend over the whole four lots? A.—Yes, if you call pasture clearance.

Q.—Is the pasture fenced in? A.—Fenced in all around outside.

20

Q.—Is the timber cut off it? A.—It was burnt down before I went there.

Q.—Has it been cleared? A.—This lot had been partly cleared; I finished all of it up myself; some of it was cleared before I went there.

Q.—You know what is meant by clearing land for purposes of agriculture? A.—Yes; before I took the place the man had 14 acres to clear.

Q.—So, in the year '77, or '76, or '78, was there a clearing extending over the whole four lots? A.—Yes.

Q.—Was there any ploughing done upon the whole of the four lots, on each one? A.—Yes; on the four lots.

Q.—Was there grain raised on each one of the four lots? A.—Yes.

Q.—Is the pastured land cleared land? A.—A good deal of it is cleared; I have been 30 clearing it.

Q.—Leave the eight acres altogether; is there one clearing extending over the whole four lots? A.—Yes.

Q.—Did you ever tell McNabb that you had paid taxes on these lots? A.—No.

Q.—Did you ever tell anybody? A.—No.

Q.—Nor Hall? A.—No; I didn't know nothing about the taxes, whether they were paying them; I wondered they didn't assess me; I can't make it out how it was they didn't assess me in it; that was the way it was.

Q.—You never served any written notice on anybody with regard to your not being assessed? A.—I took this letter down, stating I had leased the place for five years.

Q.—What letter? A.—I went to the Council, as I told you, and took a letter down from 40 Mr. Connaway, and I told them I hadn't been assessed for it.



JAMES G. COOPER, sworn for plaintiff, testified as follows:—

By MR HALL.

Q.—You are Treasurer of County of Bruce ? A.—I am.

Q.—You produce the books showing taxes unpaid for '75, '76, and '77 ? A.—I do.

Q.—I believe there was a mistake in the amount carried forward on one of these lots ?

A.—A mistake of 10 cents on one lot ; Lot 57, 10 cents too much. The amount carried forward in '76 was \$27.55. The amount was \$47.33 when I sold, in place of \$46.23. The arrears of taxes were for the years '75, '76, and '77. The years '75 and '76 were carried forward to a new book, and the extension was made \$27.55 upon one lot, it being 10 cents too much—that is on lot 57 ; 10 it was a clerical error.

Q.—It was sold for 10 cents too much ? A.—Sold for 10 cents too much.

Q.—Did you give separate tax certificates ? A.—Separate tax certificates on each lot.

Q.—Were they embraced in one lot ? A.—One deed for the four lots.

Q.—Was the consideration on that Deed of Sale 10 cents too much ? It was one consideration, was it, or were four considerations in that Deed ? A.—I can't remember ; of course the total sum would be at all events 10 cents too much. It was \$219.45, and it should have been \$219.35.

The tax certificates produced by this witness here put in ; of the four lots ; I don't know whether they are patented or not from the Department. The returns to me from the Municipalities do not show me whether they are patented or not.

Q.—You got from the Crown that information ? A.—Yes.

Q.—I suppose you got that at every sale ? A.—Yes.

Q.—Have you the non-resident assessment roll for these years ? A.—No, I have the non-resident collector's for '75, '76, and '77.

Q.—Could you say whether the whole four lots were assessed <sup>for</sup> '75, '76 and '77 ? A.—They are returned as the Non-resident Collector's Roll. These produced are the Non-resident Collector's Rolls—returns to me of the taxes against these lots. They are the Non-resident Collector's Rolls. The non-resident assessment remains with the Clerk.

Q.—You know John Eastwood's signature ? A.—I do.

Q.—That is it to these ? A.—Yes, proving signature to the Collector's Roll.

Q.—He is now dead ? A.—Yes. There is one certificate by Eastwood and one by Fleming. 30  
The '77 one is Mr. Fleming's.

Q.—In those collector's rolls, the different school sections are mentioned ? A.—Yes.

Q.—Do you know whether these school sections are the whole that were assessable in these lots ? A.—Of course I can't tell ; it would be unreasonable to suppose otherwise, but I know nothing about it.

Q.—All the school taxes were paid by this sale of those lots ? A.—Yes, undoubtedly.

Q.—Have you any books showing when the lots commenced to be assessed ; the entry from the beginning ? A.—The only returns I have, when lands are returned as non-resident the taxes are uncollectable. I have got nothing of the assessment ; simply that the taxes are on non-resident lands. Those I have here on my books are as far back as '71. I don't know how much further back.

Q.—Under section 109 of the Act, Clerk of the Municipality is required to furnish a list and



keep the list so furnished by the Treasurer, on file in his office. Now did you furnish a list to him of lands liable to be sold? A.—Yes; furnished to the Clerk in '78.

Q.—That you didn't get back again? A.—That he keeps of course. He makes his returns from that after the assessor reports.

Q.—Did you know these lands? A.—No.

Q.—Did you know their value? A.—I did not know anything further than such information I might have by looking at assessment rolls returns to me.

Q.—Did you conduct the sale in this case? How was it sold, in the whole lot? A.—Yes, because no one would take anything less than the whole. No one would bid to take a smaller portion of the lot.

Q.—How many were there at the sale? A.—I can't remember what number were there. There must have been a number. There were quite a number of purchasers at all events at the sale. There are always more bidders than purchasers. <sup>20</sup>

Q.—Not a great many at the sale? A.—Quite a considerable number; I can tell exact number in a few minutes. There were a large number offered for sale, but a large part of them remained unsold.

BY MR. FERGUSON.

Q.—What was the reason so far as you know, that the lands that were offered for sale, remained unsold? A.—Because no person would purchase them at the prices that were against them.

Q.—There was a considerable number of purchasers there? A.—Yes. 20

Q.—A crowd of people? A.—I don't know that there was a particular crowd; there were fifteen or twenty absolute purchasers, at all events, at that sale.

Q.—Were there more bidders than purchasers? A.—Yes, there are always; I feel confident there would be twenty-five or thirty people, or more; at most of our sales there are a considerable number.

Q.—Was this sale so far as you know, fairly conducted? This land sale? A.—So far as I had anything to do with it, or so far as I know, it certainly was.

Q.—You are the one who actually made the sale, I believe? A.—Yes.

Q.—You have been at other land sales of the county, before, I suppose? A.—Not except our own land sales in the county; I have been at every sale in the county. 30

Q.—Was the sale conducted in the usual way? A.—Yes.

Q.—As far as you were concerned, and as far as you know, it was fairly, openly and properly conducted? A.—In every way.

Q.—Do you know these papers shown? A.—I do, on account of the purchase and receipt for money; just same as certificates. It is properly a receipt pending the issue of the certificates; it was given immediately after the sale.

Q.—Then the purchaser got his certificate? A.—Yes.

Q.—Then he waited a year and got his deed? A.—Precisely; the deed put in and purporting to be such, is the deed I gave; and the Warrant (purporting to be such) is that under which sale took place; Robert Baird's, the then Warden of the county, name is to the warrant; and George Gould's County Clerk and the Seals of the County of Bruce, and attached to it is a Schedule of the lands to be sold, and the amount against them. 40



Q.—This Schedule contains the lands in the various townships in the county? A.—It does and there is also an entire list of lands advertised for sale for taxes in the year '78.

Q.—It is your property, I suppose? A.—Yes.

Q.—The lands had to be advertised according to Statute? A.—Yes.

Q.—There were advertisements? A.—Yes; I advertised in the "Gazette" and the local papers.

Q.—You know what advertisements are necessary? A.—Yes; they were properly advertised.

Q.—Do you keep and preserve those? A.—Yes.

Q.—You said you hadn't the assessment rolls? A.—They ought to remain with Township Clerk; copies of them are furnished to the County Clerk.

10

Q.—They don't come to your hands at all? A.—No; not the assessments,

Q.—How did you sell these four lots? A.—Each lot was offered for sale separately, as on the list, in the ordinary way, offering it for sale and inquiring who would take the lot, and then who would take less than the lot.

Q.—Each one was taken out separately and offered for sale? A.—Yes.

Q.—And the Mr. Maclean mentioned in certificate became purchaser in each case? A.—Yes.

Q.—In which one was the mistake of 10 cents made? A.—In 57.

Q.—The sale was held on the day appointed in advertisement? A.—Yes.

Q.—And at the place appointed? A.—Yes.

By MR. BOYD:

Q.—You have a map showing acreage you put in lots in return from Crown Lands? A.—I<sup>20</sup> couldn't say now whether I have taken this from that or the returns to me; I have a map from the Crown in the office; they correspond with the returns on the map. (Witness here produces Saugeen map from his office.) I have had it a number of years; I could not say where I got it; I either had this one or another; I have had a map of Township of Saugeen in the office for eight or nine years last at all events.

Q.—Either this one or a similar one to this? A.—Yes; this (one produced) is a copy of the map taken from the Registry Office.

Q.—Which is returned from the Crown Lands Department? A.—Yes.

By MR. FERGUSON.

30

Q.—It is just a blank copy? A.—Yes.

Q.—The assessments on acreage aren't every year the same? A.—No.

The book was here put in by Mr. Boyd, showing for the three years how the taxes have been paid.

WEDNESDAY, 9 A.M.

ROBERT FLEMING, duly sworn for plaintiff, testified as follows.—

By MR. BOYD.

Q.—You're Clerk of Saugeen Township? A.—Yes, and have been since July '77—1st July. W. K. Eastwood was my predecessor; he died shortly after that; he succeeded his





father, John Eastwood; and John is dead also. John was Clerk for a considerable number of years.

Q.—You prepared statement and abstract of assessments on these lots for Mr. McNabb, which he has given me; is this "J. 2," it? A.—Yes, from 62 down to 78. It is all correct.

Q.—It contains correctly an abstract of the assessment on those lots, from 62 to 78, during those years? A.—Yes; I produce non-resident assessment roll for year '75, from which it appears lots 57, 58, 59, and 60 are assessed separately, 57, 87 acres, 58, 100 acres, 59, 100 acres, 60, 101 acres. I produce non-resident assessment roll for 1876; lot 57 assessed 87 acres; 58, 105 acres; 59, 104 acres; 60, 103 acres. Year 1877, 57, 89 acres; 58, 105 acres; 59, 104 acres, 60, 103 acres. I produce also resident roll for 1877, for the Great Western. For the year 1877, non-resident, 57, 89 acres; 58, 105 acres; 59, 104 acres; 60, 103 acres.

Q.—Taking the last year for which sale took place for taxes for 1877 for example, we find 10 that portions of these lots were assessed on resident roll to the Great Western Railway 57, Lake Range,  $57\frac{4}{10}$  acres; 58, Lake Range,  $58\frac{1}{2}$  acres; 59,  $9\frac{1}{10}$  acres; 60,  $2\frac{3}{10}$  acres. Those were assessed as your book shows, to Great Western Railway? A.—Yes.

Q.—Samuel Barker, the Solicitor, was the person to whom notice was sent? A.—Yes.

Q.—Are those taxes paid? A.—Yes.

Q.—Paid by Great Western? A.—Yes; I have the Collector's roll with me.

Q.—You know that they are paid? A.—Yes, always paid.

Q.—Always paid by the Great Western? A.—Yes.

Q.—Does that include a portion of the statute labour and school tax? A.—The Collector's roll shows that. I have Collector's roll for 1877; it is curtailed into different school sections.

Q.—What was the whole amount paid on these four? A.—\$38.42 amount paid by the 20 Great Western for 1877; that \$38.42 includes statute labour.

Q.—That includes township statute labour, school rate, township rates, and all the rest? A.—Yes, \$39.35 was paid in 1876 by Great Western and the different school rates.

Q.—In the year 1877 you have the lots distinguished, and those lots are identified as parts the Great Western are paying taxes for? A.—Yes.

Q.—Are they distinguished in 1876 in the Collector's roll? A.—No.

Q.—But all the lands owned by the Great Western are included in one assessment? A.—In one assessment, 146 acres.

Q.—You know that these were 1 of that composed of part of that 146 acres? A.—Cer- 30 tainly; I didn't make this document out.

Q.—But you know the Great Western return included those? A.—Yes; the \$39.35 for 1876 taxes are taxes paid on the whole 146 acres; \$35.32 for 1877; it is the full assessment on the railway lands.

Q.—Is there no means of ascertaining the proportion of taxes applicable to that particular property? A.—It would take a little time.

Q.—You think this \$38.52 includes the taxes on all the Great Western lands in that municipality? A.—In the Township of Saugeen it is divided into school sections so that the money could be placed to the credit of each school section; that is the only reason it is divided.

Q.—As these were taxes on resident lands imposed on these particular parts owned by the Great Western, and paid by them for that year? A.—Yes, and the school tax belonging to that 40 division.



Q.—And the statute labour tax? A.—Yes.

Q.—So all the lands are classed *en bloc* there? A.—*En bloc* 146 acres.

Q.—Was that paid by the Great Western? A.—Yes.

Q.—And in 1875? A.—144 acres, amount of tax \$11.34, paid by Great Western.

Q.—And that included a portion of those same lands? A.—Yes.

Q.—And those were paid by Great Western in respect of parts of those lands as well as the other parts of lots that they owned? A.—Certainly.

Q.—Their road ran through that municipality? A.—Yes.

Q.—In the non-resident roll you see that the whole of these lots are assessed as non-resident?

A.—Yes.

Q.—And the other roll—part of it is assessed as resident and part by Great Western? A.—10  
Exactly.

Q.—Did you get a list of lands liable to be sold for taxes for year 1878? A.—Yes; from Treasurer, "K. 2," list.

Q.—Now a copy of that was sent to the collector or assessor? A.—I handed him a copy, and when he handed back the roll, he had mislaid or lost the copy I gave him, and I got this certificate from him, the certificate which he returned (certificate put in.)

Q.—This man Murker, Junr., is dead I believe. A.—He died September, '79. He gave me a solemn affirmation that that was correct, but I didn't witness it. Couldn't enter no names if they hadn't.

Q.—There was no oath taken? A.—No; it was only an affirmation that that was a true statement; there was no occasion for it when there was none of the lots become occupied; the 20  
form I gave him had a schedule to notify him if they were occupied or not; to certify they weren't occupied. He assessed these lots as non-resident in '78.

Q.—You know Murker's signature? A.—Yes; that is his to assessor's statement or return put in.

Q.—Wallis was collector for years '75, '76, '77? A.—Yes, John Wallis.

Q.—You know his signature? A.—Yes; and that is his as collector—to his statement put in—no doubt of it.

Q.—Is that Mr. Wallis' writing on the notice to the Great Western of an assessment? A.—  
Yes.

Q.—John Eastwood is dead? A.—Yes; I know his signature; '77 is the time when part of 30  
each lot was defined on the assessment roll. Acreage in '75 was 393 in the four lots; acreage in '76—this is our resident roll—401 acres; 8 acres over-assessed. It includes the railway tracts and all the 401 acres; the same in '77; the acreage is correct in '75.

BY MR. FERGUSON:

Q.—In '75 what was 57 assessed at? A.—87 acres; and there were a trifle over that in the lot.

Q.—There are 89? No; 401 acres altogether on the map; but there is a mere corner taken off the railway.

Q.—Have you any book to show what the 87 acres were assessed at? A.—\$870; \$10 an acre; these four lots were all assessed at \$10 an acre.



Q.—What was 58 assessed at? A.—103 acres; 59, 102 acres; 60, 101 acres; 400 acres in the four lots: 393 assessed, leaving 7 acres for the railway; 393 is the correct acreage, independent of Great Western track; except about 7-10ths of an acre; 89 acres in 57 altogether; 105 acres in 58; 104 acres in 59; 103 acres in 60 altogether.

Q.—Now in '75 two acres were subtracted from these lots for railway lots. A.—Yes; there is a fraction.

Q.—In '77 I understand you there was a separate assessment for the railway for their fractional part of these lots? A.—Yes; 7, 3-10th acres on the 400 acres.

Q.—Then in '76 how was it? A.—Great Western were assessed for their track all the way down, and the non-resident lots were assessed 401 acres, being 7 acres too much.

Q.—In each of the three years the lots were assessed in different ways as regards the railway land? A.—Yes. 10

Q.—How were they assessed in '77? A.—401 acres; 7 acres too much; and the Great Western were assessed for their track not defining what lots.

To COURT—I mean by the track all that they occupied.

Q.—What you mean is that in '76, township assessed railway on their line of road from one end of township to the other, where it crosses the township? A.—Yes.

Q.—That is as a block of land? A.—Yes.

Q.—So four rods wide or whatever it was the railway company were assessed for that lot through the township. A.—Gross, so many acres.

Q.—Was the acreage put down in '76 and '77, the number of acres assessed as non-resident lands, on each of these lots? A.—Yes.

Q.—Were they the same as in '75? A.—No; they were correct in '75, so they were over 20 assessed 8 acres, or between 7 and 8 in '76 and '77 on non-resident land.

Q.—It is this way that in '75 the land for the line of railway was subtracted in each of the lots, with some fractional errors, and in '76 and '77 the railway land was not subtracted from the acreage? A.—Exactly; In '77 the railway was assessed separately for each lot, and kept correct since that.

Q.—Do you know Harmer, who was tenant of this land? A.—Yes.

Q.—Remember any occasion when he was speaking to you as Clerk of Council in regard to opening up a road and being assessed for the land? A.—Yes; he presented a petition at Council Board on 30th November, '78.

Q.—Know Mr. Connaway? A.—Yes; I don't think that is his writing on the petition. 30

Q.—Did Harmer say anything to you about it before Council? A.—I think I did ask him; he wanted South-street opened up in Southampton corporation.

Q.—Harmer was there in '78, at Council Board, with this petition, and he was wanting a road opened up? A.—Yes.

Q.—He was only before the Board once? A.—To the best of my knowledge, but I was only Clerk from '77.

Q.—You have no hesitation in saying the date, looking at that petition? A.—And the minutes of the Council.

Q.—Was this entered in minutes of Council? A.—Yes.

Q.—There is an entry of this in '78? A.—Yes.

Q.—You have minutes of '76 here? A.—I have read minutes over, but could find no place 40



where Harmer appeared before the Council; I haven't read them over so carefully as I would swear to; I read them over yesterday when he was giving his evidence.

Q.—And you didn't find any entry of his having been there, before the Council? A.—Not in '76.

Q.—You, of course, wouldn't know anything about '76 but what the minutes show you? A.—Nothing more.

Q.—Statement given by you of assessment and put in by Mr. Boyd—the one that you corrected, when was that given to defendant; on day it bears date? A.—It was posted on that date or the following morning.

Q.—You told Mr. Boyd Mr. Murker made a solemn affirmation before you in regard to this 10 certificate? A.—Yes.

Q.—Was that reduced to writing? A.—No.

Q.—I suppose you mean he affirmed? A.—Solemnly affirmed.

Q.—Did you administer the affirmation to him? A.—Not in that way—holding up right hand.

Q.—I want to know what you mean? A.—He solemnly affirmed that that was a true and correct statement.

Newspaper put in, "M. 2."

Q.—Is that the correct advertisement of this sale? A.—The very identical.

RICHARD SKILL, sworn for plaintiff, testified as follows:

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By MR. BOYD:

Q.—You're Clerk in office of Solicitor of the Great Western? A.—I am, and have been for nine years in May 27th.

Q.—Did you have the getting up of the returns and statements to make to the municipal officers? A.—Ever since '73; returns for '72 were sent in before I went to the office.

Q.—Since '73 you have made up statement to send to the Municipalities showing the lands the Great Western owned? A.—Yes; and in '73 we sent a statement—the statement put in—and the statement put in is correct statement for '73.

Q.—In this particular municipality, what was quantity of land the Great Western occupied on Lot 57? A.—40-100ths 58, 2 30-100ths 59, 2 30-100ths 60, the same. 30

Q.—That is shown on this return you made in '73? A.—To Township Clerk John Eastwood.

Q.—And the taxes for that year were paid? A.—Yes; the first thing after our notice goes in, under 26 of present Statute, the Assessor sends notice of assessment; he is bound by our statement of lots with regard to acres, but he isn't bound by the value; they vary a great deal in value; we take good care, they don't alter acreage much.

Q.—What is total acreage in '78? A.—152 23-100ths in the whole Township; it is set out in that statement of lands (N. 2.)

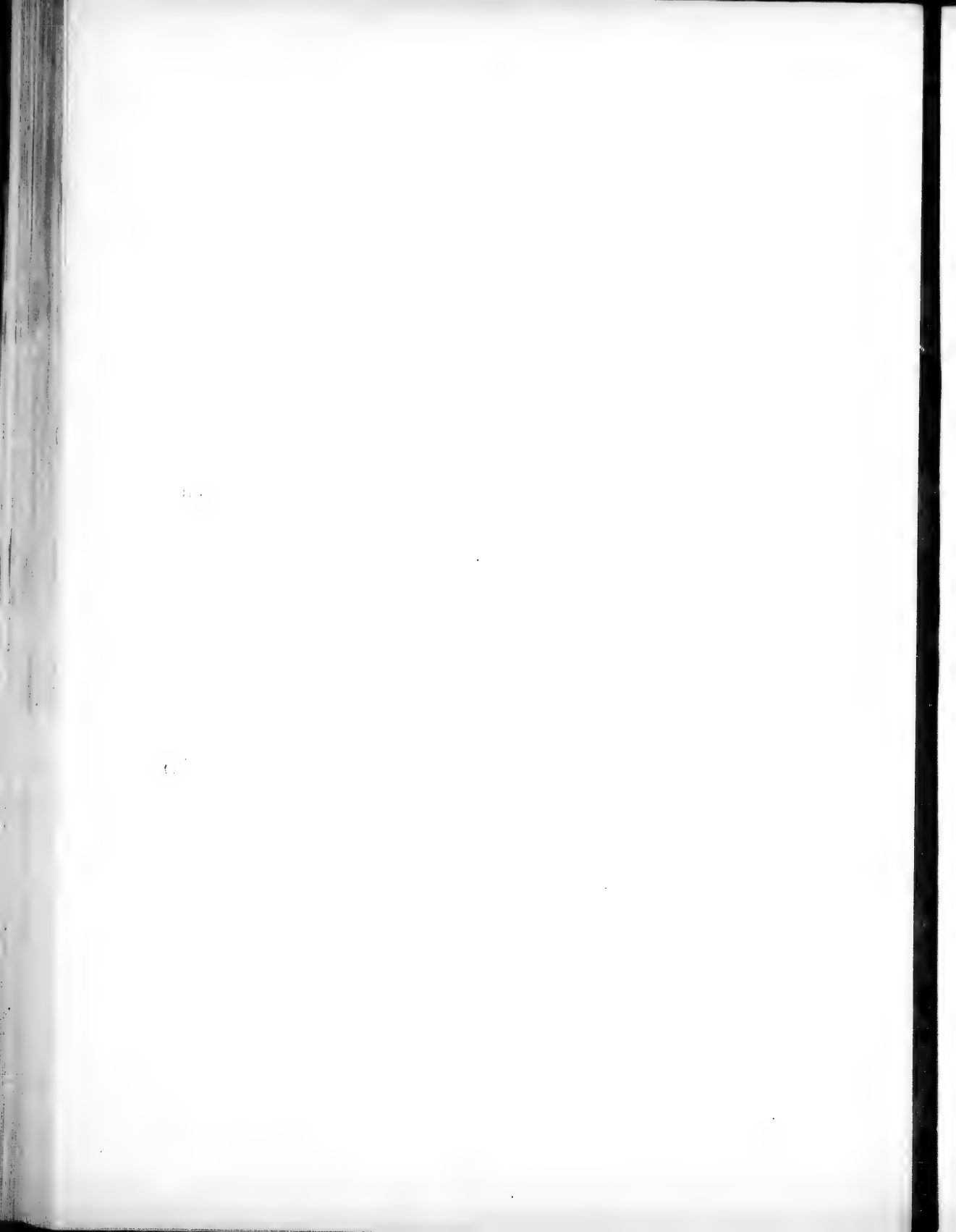
Q.—Is this correct copy (O. 2)? A.—It is correct copy of return to Township by me.

Signatures of Eastwood and Wallis, County officials, admitted to the documents.

Q.—They make same number of acres? A.—Same number.

Q.—But don't give details as you had given them the previous year; you simply give the aggregate amount in '74? A.—No; '74 we give aggregate amount, not the details.





Q.—But the aggregate amount was the same as in previous year? A.—Same as in the previous year.

Q.—And the taxes on that were paid by your Company? A.—Yes, they were paid.

Q.—Now, '73; is this "P. 2" a correct copy you made from your records? A.—That is a correct copy.

Q.—This shows the same aggregate acreage as the previous year? A.—Except Port Elgin which had been incorporated in '74; the same quantity for these particular lots; they have never been altered; 144, 71-100 was correct quantity

Q.—On which you were assessed and paid your taxes? A.—Yes.

Q.—This, I see particularises the school sections 1, 2, 5 and 6 and Statute Labour? A.—Yes.

Q.—Therefore they must have ascertained the localities of the lands to apportion the school moneys? A.—They're the lists; it wasn't necessary to give them a second copy until there was an alteration. 10

Q.—In '76 you make a slight change in the acreage, is this a correct copy (Q. 2)? A.—Yes.

Q.—Change produced by two acres as you have marked? A.—As stated in return.

Q.—'77 is that "R. 2" a correct copy? A.—Yes, I made that myself; it is correct.

Q.—Then you give a statement here that acreage has decreased to 116,1%? A.—That is on the whole township; but not on those particular lots the change was: the assessors for Township of Saugeen, had been assessing us 23,1% acres in Government Reserve; the other side of South Street which our engineer had placed on the plan in Township of Saugeen, and if you refer to the book of the right of way, it is registered as in Township of Saugeen; but it was in June '76 when we went into the question; there was a change of Solicitors on the Wellington, Grey 20 and Bruce.

Q.—You found these lands were in another municipality? A.—In village of Southampton, and we had been assessed for them twice.

Q.—But there was no change in the acreage of these four lots? A.—No.

Q.—The taxes for all these years were paid by the Company? A.—They were paid; and I produce receipts and also cheque of the Great Western, and collector's receipt on the back for the taxes.

Q.—That map we put in yesterday from your office was a correct one? A.—Yes.

Mr. Boyd puts in "S," "T," "U," copies of assessment notices sent by Municipality to Great Western for three years. 30

BY MR. FERGUSON.

Q.—Is it a conveyance of the lands across the whole four lots? A.—Yes.

Q.—Does it show acreage? A.—Yes, on the plan it just shows how the lots are cut.

Plaintiff closes here; defendant opens by calling

JOHN MCNABB, (recalled).

BY MR. O'CONNOR.

Q.—Harmer stated yesterday that lately you had been cutting some timber on these lots?

A.—After I had received notice not to cut timber, I stopped cutting, myself, but I found out Harmer's son was cutting wood, and I stopped him, and I went down myself and gave notice to 40



the men I found chopping, to desist; one man was splitting rails and the others chopping wood, and I stopped the men; however before I could get the wood seized, they had it taken away, as I understand over fifty cords, and sold it in the village of Southampton, the Harmers.

Q.—Did you seize the wood and prevent them taking any more of it? A.—I prevented them taking any more of it.

Q.—Do you mean to say that is all you ever done in the way of cutting and removing timber since you were given instructions not to cut? A.—Yes.

Q.—Did you engage any person to do it in any way? A.—Not at all.

Q.—Did you know anything about any person doing it on your behalf? A.—I have allowed some parties to take away fallen timber to burn for bricks; since that I have allowed them to<sup>10</sup> take it off the front; there wasn't any value in it; I didn't take it myself.

Q.—What they took was of no value? A.—No; the fire had run over it for years, for the last fifteen or twenty years.

BY MR. BOYD.

Q.—If it was of no value they would not have taken it? A.—Merely for this that they weren't paying anything for it; it might as well have been taken away as to be burnt up; I say that I did take cordwood that I seized; there was value in that.

Mr. Ferguson here puts in a certified copy of the warrant.

ALEXANDER McNABB, re-called.

20

BY MR. FERGUSON.

Q.—You told me yesterday you hadn't since the payment by you, or the manner in which you paid the taxes in 1875, done any business for Mr. Fleming? A.—Not that I recollect.

Q.—Were you present in 1875 when a lease to Harmer was made? A.—I think not.

Q.—Did you act in any way for, or as agent of Mr. Fleming, in making that lease? A.—I think not.

Q.—Now, since the time of the letter received from him of October, 1874, (long letter) have you been agent for Mr. Fleming at all? A.—No.

BY MR. BOYD.

30

Q.—You knew Mr. Hall was acting for Mr. Fleming, you told me so yesterday? A.—I understood so.

Q.—So then, you did act for Mr. Fleming after this long letter was written? A.—No.

Q.—In the payment of these taxes, for one thing? A.—It was Mr. Hall wrote me.

Q.—But you knew he was acting for Mr. Fleming? A.—I heard Mr. Hall was his agent. It was not for Mr. Fleming at all that I was acting, but Hall simply wrote me asking me if I would draw on him for the amount.

Q.—When you say you were not agent you mean you weren't appointed in writing? A.—No, nor any other way that I am aware of.

Q.—That is what you mean by being an agent. "My opinion of an agent is this, that he



should be regularly appointed an agent by writing." You said that when you were examined?  
A.—Yes.

Q.—So you are speaking in that way when you speak of your not being an agent?  
A.—Yes.

Q.—You are aware there is a travelled road along the Lake front of this lot? A.—Not the Lake Shore, or what is called Goderich Road.

Q.—Along the front crossing these lots or front there is a travelled road? A.—Not on the Lake Shore.

Q.—Used before gravelled road was opened? A.—No; it was just a track on beach.

Q.—There is a track that people used to travel? A.—For foot-passengers.

Q.—And waggons also? A.—No, not used by waggons; it has not been used by waggons<sup>10</sup> along the Lake Shore

By MR. FERGUSON.

Q.—When you answered me that you weren't agent, did you mean only that you weren't appointed in writing, or were you appointed agent at all? A.—I considered I never was agent at all.

Q.—Did you do anything at all for Mr. Fleming after 1874 down to present time, barring that receipt? No, not that I am aware of at all; I have no recollection of doing anything at all since then.

Q.—Then were you his agent appointed in writing or any other way during that time? A.—No; had any other person written to me in the same manner to have done that favour for them, draw upon them for the amount believing them to be good, I would have done<sup>20</sup> same for anybody, not for Mr. Hall alone, but for any one that would have asked me.

By MR. BOYD.

Q.—You are aware that you were assessed as agent of this land in 1872? A.—I am not aware at all; Mr. Fleming is assessor, and Mr. McNabb is agent; I saw that on the roll, and I drew attention to it.

Q.—Can you explain at all how it is the assessment is made on this land is as resident land down to 1874, and from 1875 downwards it is assessed as non-resident? A.—No, I can't.

By MR. FERGUSON.

30

Q.—Were you ever consulted, or did you authorize your name in any way to be put on the assessment roll as agent? A.—No.

Q.—When did you first know that your name was on the roll as agent? A.—Twenty-eighth February last.

JAMES T. CONNAWAY, sworn for defendant, testified as follows:

By MR. O'CONNOR:

Q.—You are witness to lease—Hall and Sandford Fleming to Harmer? A.—Yes; that is my signature as witness.

Q.—And Mr. Hall's and Mr. Harmer's signatures are opposite these scale? A.—Yes.

40

Q.—Did you take any part in having this lease entered into? A.—Mr. Fleming happened



to be in Southampton at the particular time, and he asked me if I could recommend a suitable tenant, and I told him it would require considerable time to think the matter over, and I looked around and couldn't get a suitable man, and finally I pitched on to Harmer; he was a tenant of mine, and I recommended him to Mr. Fleming, and that was the understanding entered into, and he got the lease with my recommendation; at least I think so.

Q.—Do you say Mr. Fleming asked you to look out for a tenant for him? A.—Yes.

Q.—Had McNabb, as far as you know, any thing whatever to do with this leasing to Harmer. A.—Not that I am aware of; I never had any reason to suppose he was interested in the matter one way or the other.

Q.—As agent in any way? A.—No; I never knew any thing of the kind.

10

Q.—You have lived in Southampton a long time? A.—Lived about 30 years.

Q.—Small place? A.—Not very large yet.

Q.—You know Mr. McNabb well? I knew him when he first came, and was Crown Lands agent, and I never heard anything of the kind that he was an agent.

BY MR. BOYD:

Q.—Which Mr. Fleming was it asked you? A.—David.

Q.—You had no communication with Sanford? A.—Not that I am aware of, never.

Q.—Know this road McNabb speaks about along lake shore? A.—No; I don't know anything about that road; there is a street they call South Street.

Q.—The road along the front of the lot I mean? A.—Yes; gravel road.

Q.—Along the lake front? A.—I don't know anything about that at all.

20

Q.—Were you at the sale? A.—Yes

Q.—The tax sale? A.—Yes.

Q.—Why is it a smaller portion of the lots was not taken for the taxes? A.—I don't know; I can give you the reason I didn't buy them; I knew they belonged to Mr. Fleming, and I took it for granted if I bought them they would be redeemed, and of course I wanted to invest in land that would not be redeemed.

Q.—It was well known the land belonged to Mr. Fleming? A.—So far as I was concerned it was well known to me.

Q.—And to others? A.—I don't know about that; I can't speak for others.

Q.—Are you the man who took away hay from the land. A.—Yes.

30

Q.—Did Mr. McNabb follow? A.—Yes.

Q.—You have become reconciled to him since then? Were you pleased that he should follow you and get \$20 out of you for the hay? A.—Yes; specific agreement; I promised to pay him \$20 for the hay.

Q.—To pay whom? A.—Mr. McNabb I suppose.

Q.—You took the hay without paying for it? A.—He didn't press the matter; I was to get enough for \$20.

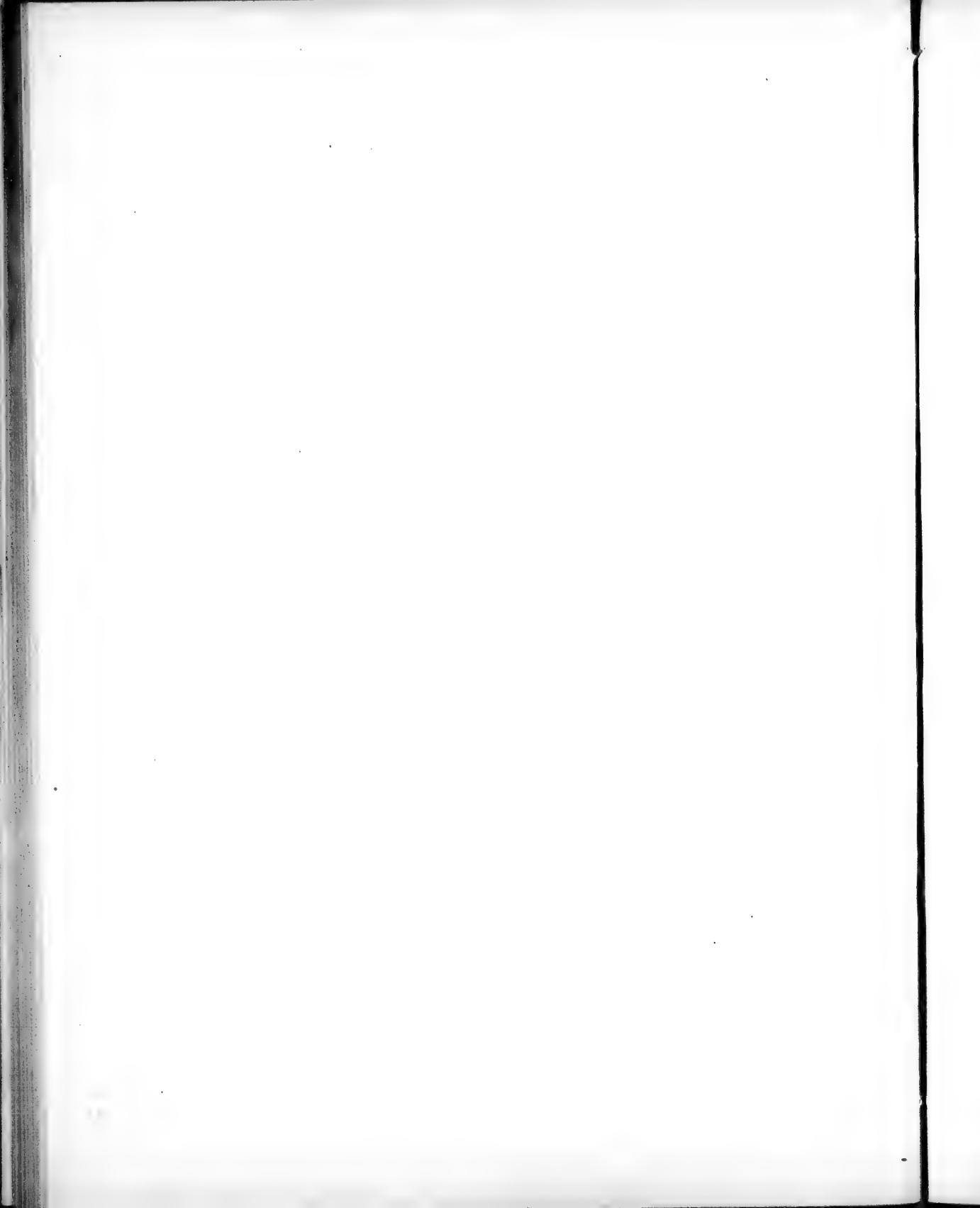
Q.—You took the hay without paying for it? A.—I did pay for it.

Q.—Who? Mr. McNabb? A.—Yes.

Q.—You didn't go on without the understanding that you were to pay for it? A.—No.

Q.—You didn't take it as a trespasser or spoiler at all? No; it is not likely.





Q.—You took it by arrangement with Mr. McNabb? A.—Yes; but that was a long time previous to execution of lease.

Q.—You made an arrangement with Mr. McNabb as representing the owner of the land? A.—As owner of the land; I gave \$20 for the hay.

Q.—Did you make the arrangement for taking the hay before you took it with Mr. McNabb as owner of the land? A.—Well, I can't say.

Q.—Did you? A.—I knew the land belonged to Mr. Fleming.

Q.—Did you? A.—I can't say.

Q.—You didn't take the hay as a trespasser, but you made an arrangement with McNabb as representing the owner of the land? A.—I took it for granted he had authority to do so.

Q.—Did you make an arrangement with McNabb for the hay before you took it, representing the owner of the land? A.—I knew perfectly well the land belonged to Mr. Fleming. 10

A.—If you say you don't know what "representing" means I'll explain? A.—I know perfectly well what it means; I took it for granted he had authority to sell the hay.

Q.—And you made the arrangement with him as representing Mr. Fleming? A.—I suppose it was so.

BY MR. O'CONNOR:

Q.—How long ago was this? A.—Several years previous to execution of lease; but with respect to exact date I can't remember.

Q.—Would it be ten years before that? A.—I don't know; I can't say; I suppose it would be 8 to 10 years; but it was several years before execution of lease. 20

BY MR. BOYD:

Q.—Wasn't this hay business in year '74? You have undertaken to swear it was several years before the lease. A.—I think it was; that doesn't state the exact period.

Q.—I want you to state the exact period? A.—I can't do it.

Q.—I want you to tell me whether it was not in '74? A.—I can't tell you.

Q.—I read you now letter June '74, written by McNabb, in which he says, "I have since been looking for Connaway and only this eve caught him at home, and I presented your order which he said was correct," etc., etc.; that was '74; have you any doubt it was in '74? A.—According to that statement it would be '74. 30

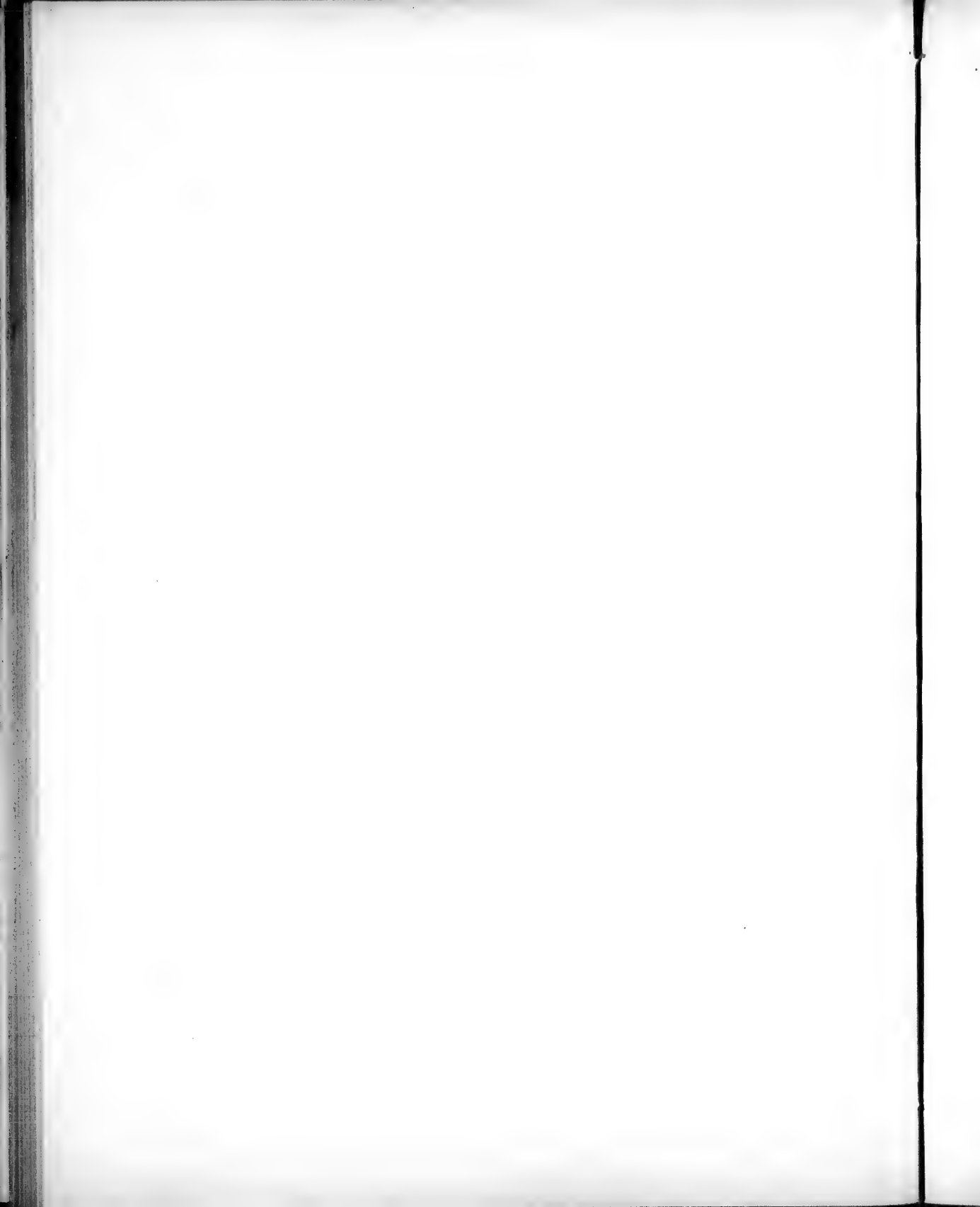
BY MR. FERGUSON:

Q.—Know how long it was after you got the hay before you paid for it? A.—A very short time.

ROBERT FLEMING, *recalled*. By MR. FERGUSON:

Q.—How far have you searched minutes of Council? A.—From beginning of April, '75, till April 3rd, '77.

Q.—And have you found any record of any application made by Harmer? A.—There is no application made by Harmer, but there are two letters from Southampton Council about opening up some road. 40



Q.—There is no record of Harmer at all? A.—No record of Harmer; I think Harmer has been applying to Southampton Township; this land is included in Town Plot, Southampton; Saugeen wanted Southampton to pay half expenses of opening road up—Mr. O'Connor puts in petition '78 to the Corporation Council—I have searched records of Council from '75 down to 2nd July, '77, when I was appointed Clerk, and since that time the only application was the one of '78

*Defence closes.*

*Plaintiff recalls MR. HARMER.*

By MR. BOYD :

Q.—You know about the road Mr. McNabb spoke of, along the lake front of these lots?

A.—There is a road along there.

Q.—How long has it been travelled? A.—Before I came there, and I have been there 10 years.

Q.—Has it been travelled ever since? A.—People go up and down.

Q.—Is it used for waggons and horses? A.—Yes.

Q.—As well as for passengers? A.—Yes.

By MR. FERGUSON :

Q.—Mean to say waggons were driven along that road on lake shore? A.—It is not on the lake shore, it is inside the lake; it is sandy.

Q.—Then Mr. McNabb is nearer when he says it is not a waggon road? A.—An old travelled road; we don't make it a practice, only sometimes; people go down that way; you can't go down a week but what we see waggon tracks.

Q.—Sometimes people go through it with waggons? A.—For a near cut.

By MR. BOYD :

Q.—Does it go as near lake shore as not to go on bank? A.—Sometimes 50 or 60 feet from the banks; sometimes further, and sometimes no further.

By MR. FERGUSON :

Q.—Is it improved, graded, or anything done on it? A.—No; culverts made across it like, over the stream.

Q.—Occasionally a waggon goes through? A.—Oh yes, often.



## EXHIBITS FILED AT TRIAL.

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### EXHIBIT "A."

Crown Patent to Sandford Fleming, dated 24th March, 1874, all that parcel or tract of land, situate, lying, and being in the Township of Saugeen, in the County of Bruce, 194 acres, being lots 57 and 58, in the lake range of the said Township of Saugeen; reserving the road allowance along the banks of Lake Huron, and free access to the shore thereof, for all vessels, boats and persons.

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### EXHIBIT "B."

Crown Patent to Sandford Fleming, dated 8th October, 1874, all those parcels or tracts of land, 207 acres, being lots 59 and 60 lake range, Saugeen; reserving the road allowance, along the top of the bank of Lake Huron, and free access to the shore thereof, for all vessels, boats and 10 persons.

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### EXHIBIT "C."

No. 415. Mr. Sandford Fleming, Mr. Alex. McNabb, agent; amount of your assessment, \$16.48.

TOWNSHIP OF SAUGEEN, 17th December, 1874,

SIR,—Take notice that your taxes for the year 1874, are as undermentioned, and if you neglect to pay the same for fourteen days, after this my demand for the same, I shall be obliged to levy the same by the distress and sale of your goods and chattels.

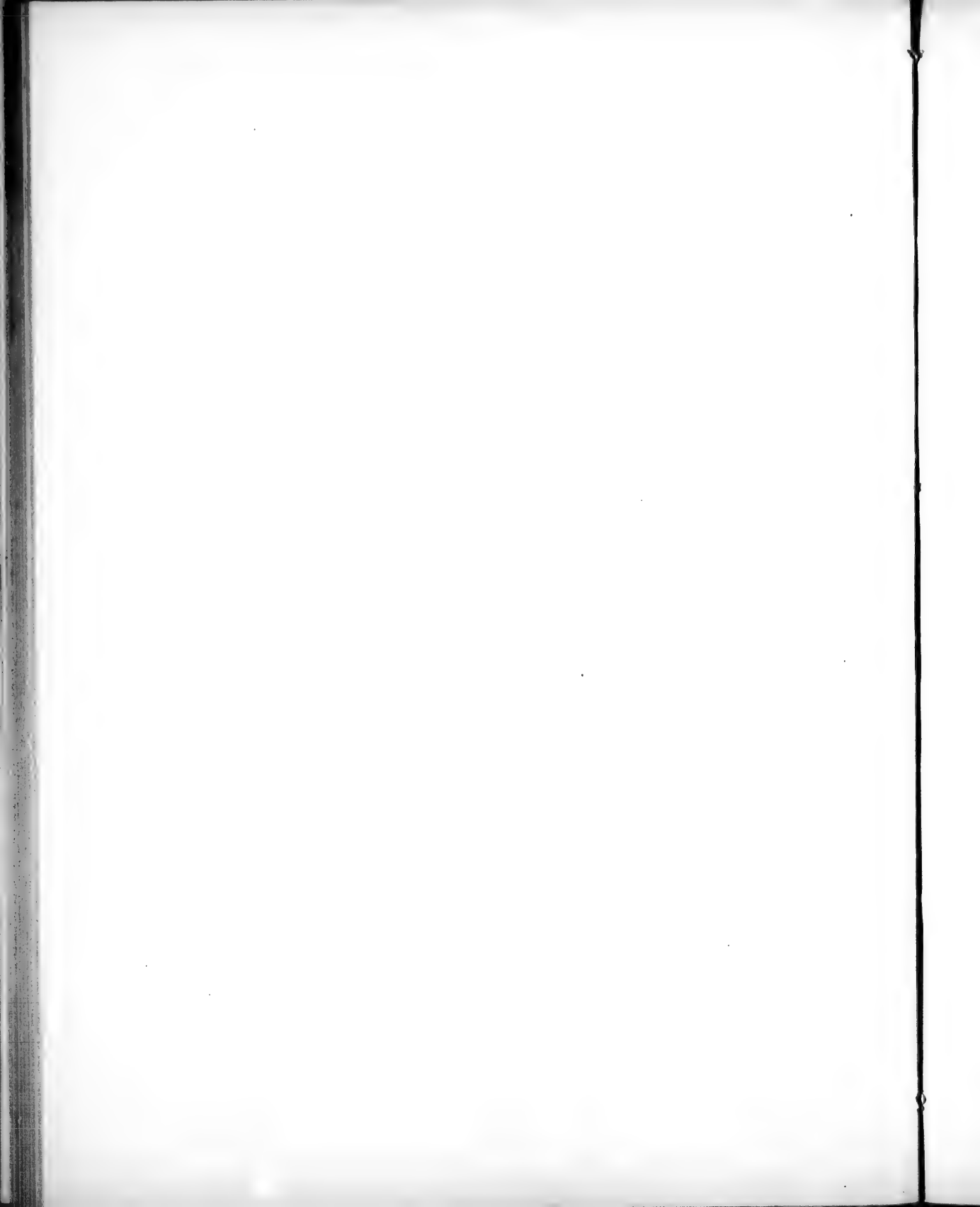
(Signed,) JOHN WALLACE,  
Collector, Dumblane P. O.

|                                                                                            |            |
|--------------------------------------------------------------------------------------------|------------|
| The rates are as follows: County Rate, 8½ mills on the dollar, \$14.06.....                | \$14 06 20 |
| 2 School Rates, 3 mills on the dollar, \$4.94; Statute Labour, unperformed, 5 days, \$5.00 | 9 94       |

|                                              |               |
|----------------------------------------------|---------------|
| Arrears of taxes on occupied lands, nil..... | Total \$24 00 |
|----------------------------------------------|---------------|

Received Payment, Collector.

The following Endorsement is on this Exhibit. The taxes mentioned in this notice, are on the undermentioned property, lying in the Township of Saugeen, Lots 57, 58, Con. L. R.



## EXHIBIT "D."

No. 409. Mr. David Fleming, A. McNabb, agent, amount of your assessment, \$17.50.

TOWNSHIP OF SAUGEEN, December 17th, 1874.

SIR,—Take notice that your taxes for the year 1874, are as undermentioned, and if you neglect to pay the same for fourteen days after this my demand for the same, I shall be obliged to levy the same by the distress, and sale of your goods and chattels.

(Signed,) JOHN WALLACE,  
Collector Dumblane P. O.

The Rates are as follows: County Rate  $8\frac{1}{2}$  mills on the Dollar, \$14.95 $\frac{1}{2}$  ..... \$14 95 $\frac{1}{2}$  10  
2 School Rates, 3 mills on the Dollar, \$5.27 $\frac{1}{2}$ ; Statute Labour, unperformed, 5 days, \$3.00 10 27 $\frac{1}{2}$

Arrears of Taxes on occupied lands nil.....Total \$25 23

Received Payment, Collector.

Endorsed on this Exhibit is the following: The taxes mentioned in this notice are on the undermentioned property, lying in the Township of Saugeen, Lots 59, 60, Con. L. R.

## EXHIBIT "E."

No. 140. \$54.08, Taxes. Original for party paying taxes, County of Bruce.

TREASURER'S OFFICE, WALKERTON, 26th MAY, 1875.

Received from A. McNabb, Esq., agent for D. Fleming, Esq., the sum of \$54.08, being Taxes due on the following lands for the period named: 20

|                                                    |               |
|----------------------------------------------------|---------------|
| Lot 57, Lake Range, Township of Saugeen, 1874..... | \$12 31       |
| " 58, " " " " " .....                              | 14 02         |
| " 59, " " " " " .....                              | 13 93         |
| " 60, " " " " " .....                              | 13 82         |
|                                                    | ----- \$54 08 |

Signed in Triplicate,

(Signed,) JAMES G. COOPER,  
Treasurer County of Bruce.

## EXHIBIT "F."

SOUTHAMPTON, 22nd May, 1875. 30

DEAR SIR,—I duly received yours of the 11th inst., enclosing Collector's notice for taxes on lots 57 to 60, lake range, Saugeen. I now enclose Treasurer's receipt for \$54.88, for which I have drawn upon you through the Merchant's Bank, Walkerton, including commission and postage, say \$55. Taxes, \$54.88; bank and stamp, 56c.; postage, 6c..... \$55 50

Yours, truly,

(Signed,) A. McNABB.

JAMES HALL, Esq., M. P., Peterboro'. Receipt for Saugeen taxes.





## EXHIBIT "G."

SOUTHAMPTON, 11th August, 1875.

MY DEAR SIR,—I duly received yours of the 22nd ult.; since then I saw Sproat and read him your letter to shew the blame of delay was his, not your brother's. I trust the affair is, ere this, closed up. I return your brother's letter, I suppose by this time he has returned to Ottawa. I received last night the enclosed \$20 from Conway, which I hasten to forward. When the Saugeen lands are placed in Blaikie & Alexander's hands for sale, I think it would be well that reference be made to John Eastwood, Port Elgin, and also to me; to the former, B. & A. should write, stating terms and conditions of payment, and should he find a purchaser, promise a certain sum, say \$50. All well; with kind regards to Mrs. Fleming.

I remain, yours truly,  
(Signed,)

A. McNABB.

10

D. FLEMING, Esq., Toronto.

## EXHIBIT "H."

SOUTHAMPTON, 19th June, 1874.

MY DEAR SIR,—I have to apologise for not sooner replying to yours of 3rd inst. I have since been looking after Mr. Conway, and only this evening caught him at home. I presented your order, which he said was correct, but was out of funds and unable to pay, but promised to pay soon. I shall keep at him. With regard to value of farm lots, I have consulted parties who I consider good authority, and they agree that \$30 an acre is their value, that is \$6,000 for the 200 acres. Mr. Ellis sold his lot, No. 51, this week for \$25 an acre—a poor house, good barn, shed, &c.; about 40 acres cleared. There is a large portion of the lot below the bank on the lake shore very poor land. Your lots are better land and better situation. Farm lands are in great demand, and the crops are very promising. I think if you make it known you wish to sell, purchasers will be found. I am very anxious to know if Mr. Sproat has carried out his promise as regards the payment of the \$3,000 to the Bank to meet your discharge. Mr. Austin, the Engineer, is here to-night, inspecting the works, with the view, I suppose, of giving the contractors an estimate. Yours truly,

(Signed,)

A. McNABB.

30

D. FLEMING, Esq., Toronto.

Abbie has returned home, in prospect of employment on the Pacific Railway. I had hoped something would have cast up; it seems there is no opening.

## EXHIBIT "J."

SOUTHAMPTON, 5th March, 1874.

MY DEAR SIR,—Since writing the other day I have ascertained that the hay was cut and removed off your farm lots by Mr. Conway and a man named Weatherald, a baker here, said to be under your authority. I can make an arrangement with a respectable person here to take



charge of the land and to pay taxes, &c., for the current year and during time of lease. I will see the conditions are carried out. I don't know how last year's taxes stand. I sent the Assessor's schedules last and former year to Sproat. I would write to him for information, but he would not reply; perhaps you had better drop him a line. I hope you will allow the person I have in view to have a lease of the lots. Nothing new. Every appearance of early opening of navigation. Our harbor works are making poor progress. Our kind regards to Mrs. Fleming.

Yours truly,

(Signed),

A. McNABB.

D. FLEMING, Esq., Toronto.

EXHIBIT "K."

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SOUTHAMPTON, 4th April, 1874.

MY DEAR SIR,—I send assessment schedule for 1873 and '74; please notice memo. on the back of the latter, arrears of taxes not paid. You need not be surprised at the Goderich contract being given to Moore & Co., when you hear that McLay, the Registrar, is connected with them—reward for election services. Excuse haste.

Yours truly,

(Signed),

A. McNABB.

D. FLEMING, Esq., Toronto.

EXHIBIT "L."

SOUTHAMPTON, 30th April, 1874.

20

MY DEAR SIR,—Mr. Tully, who I expected would have leased your farm lots, has backed out; it will require a large expenditure to fence the clearing and open up a road up the boundary to the Goderich Road. Parker and Davies will not allow the old road through their land to be travelled. To-day a man named Sibbard, employed as trackman on the Railway, called to enquire about the land. He will take it for (10) ten years for the taxes and statute labour. Please let me know what answer I shall give him. We noticed your name in the *Globe* lately in connection with the Toronto Water Works; did you receive the appointment referred to. We are all well. With kind regards to Mrs. Fleming.

Yours truly,

(Signed),

A. McNABB.

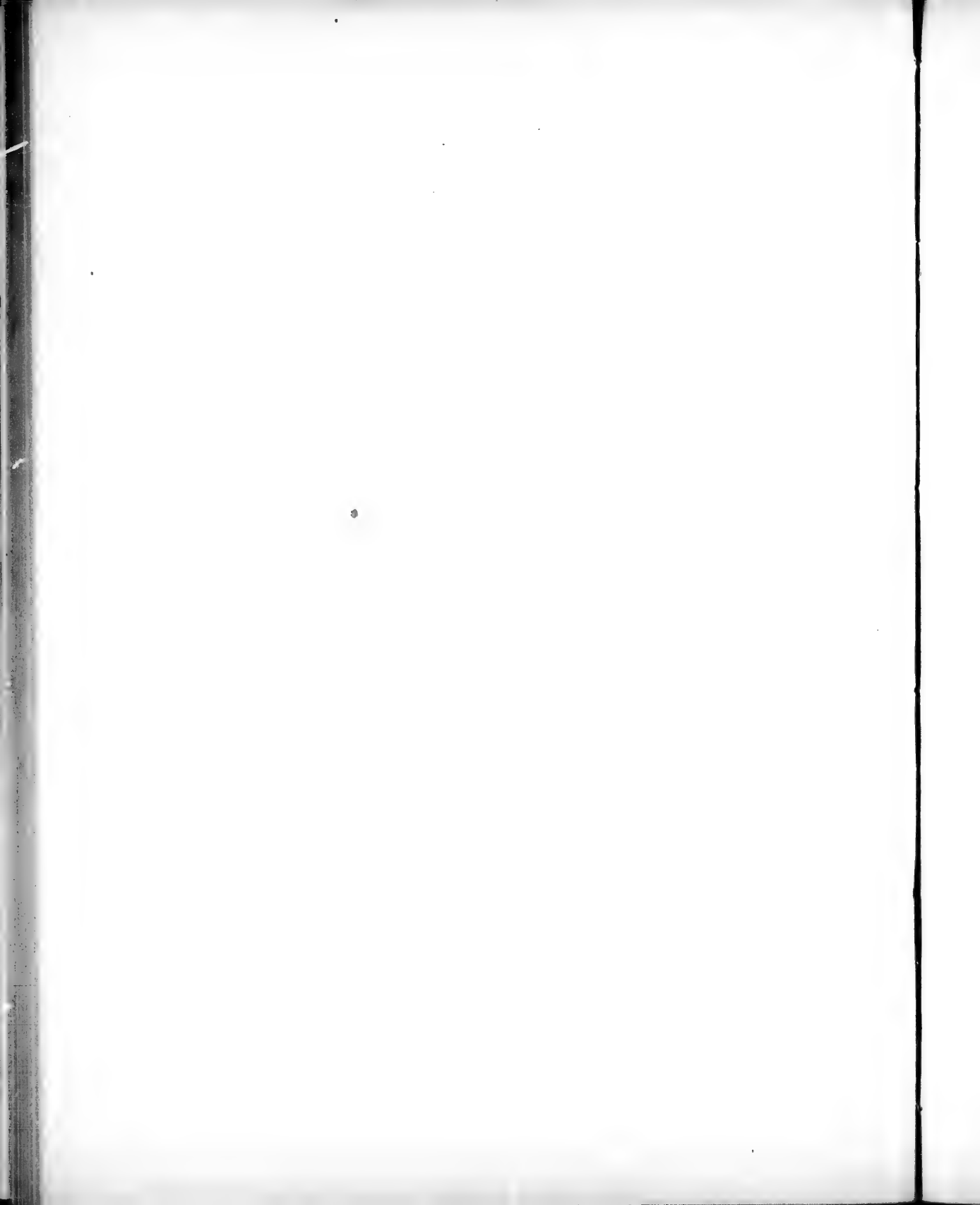
30

DAVID FLEMING, Esq., Toronto.

EXHIBIT "M."

SOUTHAMPTON, 12th Feb., 1874,

MY DEAR SIR,—I am reminded by your postal card I should have written some time since about the land taken for right of way, but I put off, expecting every day to hear some news



either from Walkerton, or Goderich, but have heard nothing. In consequence of the three lots being so cut up, I considered the County should pay at the rate of \$50 per acre; the line enters at the corner between 57 and 58, making three gores, and passes through your clearing. I think if Sproat insists the Company will pay above price. I have not heard who has got the Goderich contract, have you. Tom is pushing on the work here all his own way; no one to oversee; there will be a great saving of iron and stone. All well. With kind regards to Mrs. Fleming,

Yours truly,

(Signed),

A. McNABB.

D. FLEMING, Esq., Toronto.

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EXHIBIT "N."

10

Plan of railway over lots in question.

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EXHIBIT "O."

Lease of Lots 57, 58, 59, and 60, Lake range, Saugeen, 400 acres less the road used by W. G. and B. Railway, Sandford Fleming, by his agent, James Hall, to Henry Harmer, five years from 1st May, 1875, \$65 a year, payable on 1st November, and taxes. It is mutually agreed between the parties, that a receipt for taxes paid on said lands, shall be considered as cash in payment of rent.

(Signed),

JAMES HALL, AND HENRY HARMER.

20

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EXHIBIT "P."

SOUTHAMPTON, 20th March, 1862.

MY DEAR SIR,—Yours of the 12th inst., inclosing transfer from your brother Henry, came to hand some days ago, for which please accept many thanks. Cunningham, I understand has left your farm, and is living in this village; he removed to avoid payment of the taxes. I am at a loss to know how the Department could have told you anything about the improvements on your lots, as I never reported them. I think the clearing is large; it will be a pity to allow the property to go to ruin.

Yours truly,

(Signed),

A. McNABB.

S. FLEMING, Toronto.

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EXHIBIT "Q."

SOUTHAMPTON, 18th Dec., 1866.

MY DEAR SIR,—Mr. Smith, who leased your farm lots, gave them up last summer, and I prevailed upon a very good man to take an assignment of the lease, but he finds the taxes so



high, caused to some extent by the gravel road expenditure, that he called to-day to give them up. Talking the matter over, I think he will take them for a term of years (say five), and will clear up about ten acres of old slashing, and straighten up the rubbish. Should you agree to this, he will pay up this year's taxes, \$39, road work, \$6 = \$45. Let me hear from you in reply, soon as possible, so that I may if possible secure the payment of the taxes. I attended last spring and summer meetings at Fergus and Mount Forest, to advance the Guelph and Saugeen Railroad, but all ended in talk among the public men that appeared to take interest in the matter. I traced a large amount of dishonesty, hence the failure. We are all well, and unite in kind regards.

Yours truly,

(Signed),

A. McNABB.

10

SANDFORD FLEMING, Esq.

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EXHIBIT "R."

SOUTHAMPTON, 10th July, 1880.

DEAR SIR,—I am in receipt of your letter of 8th inst., relative to certain lots formerly owned by Mr. Fleming. In reply, I beg to inform you that the tax deed is held by my son. As I have no say in the matter, I have handed him your letter; he writes to you by this post. Yours truly,

(Signed,)

A. McNABB.

JAMES HALL, ESQUIRE, Walkerton.

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EXHIBIT

20

SOUTHAMPTON, 10th July, 1880.

DEAR SIR,—My father has just handed me your letter of 8th inst., respecting lands in Saugeen for which I hold a tax deed. You ask how Mr. Fleming may get back the land. I may state that I consider the block worth eight thousand dollars (\$8,000), but am prepared to accept half of that sum, say four thousand (\$4,000), payable in full, or cash two thousand dollars (\$2,000) and a mortgage on the land for the balance, payable in five (5) years, with interest at eight (8) per cent. Yours truly,

(Signed,)

JOHN M. McNABB.

JAMES HALL, Esq., Walkerton.

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EXHIBIT "T."

30

PETERBORO, 11th May, 1875.

MY DEAR SIR,—Would you have the kindness to settle the taxes on Mr. Fleming's lots, in Saugeen, and draw on me at sight for the amount through any of the banks here; we have four of them—the Bank of Montreal, Toronto, Ontario, and Commerce. I only received from Mr. Fleming the enclosed last night, and don't know what may be the amount due now; but whatever it is, your draft for the amount will be duly honored, and I will consider it a great favour. I am, dear Sir, yours truly.

(Signed,)

JAMES HALL.





## EXHIBIT "U."

OTTAWA, 8th May, '75.

DEAR MR. HALL,—The enclosed has been lying on my table for a good long time; I wish very much you would attend to it. I have patent for both lots. I have been extremely busy, and am still, getting the surveying parties away. All well. Yours truly,

(Signed,)

SANDFORD FLEMING.

## EXHIBIT "V."

WALKERTON, 25th May, '75.

DEAR SIR,—Your favor of the 22nd inst. has this day had attention, and I enclose receipt in your letter to Hall. Draft amount to \$55.50. All well here except Adam, who is now, I am 10 happy to say, rapidly recovering from measles. Eliza has been a little poorly for a couple of days. I am, yours truly,

(Signed,)

A. SPROAT.

A. McNABB, Esq.

## EXHIBIT "W."

WALKERTON, 8th July, '80.

DEAR SIR,—You may suppose I was surprised when informed by Frank Fleming that Mr. Fleming's land had been sold for taxes, that you were the purchaser, and that the time for redemption was passed, as the lots have been under my care, leased for Harmer, who engaged to pay taxes, and assured me that it had been done, I was the more surprised. As I should not 20 have trusted to Harmer, but seen the receipts, as I am altogether and only to blame in this matter, I would like to know how you feel in the matter, and how Mr. Fleming may get his land again. I intended to see you ere this, and hope to have the pleasure next week. Please let me hear from you in the meantime, and oblige yours truly,

(Signed,)

JAMES HALL.

## EXHIBIT "X."

COLLINGWOOD, 17th June, 1880.

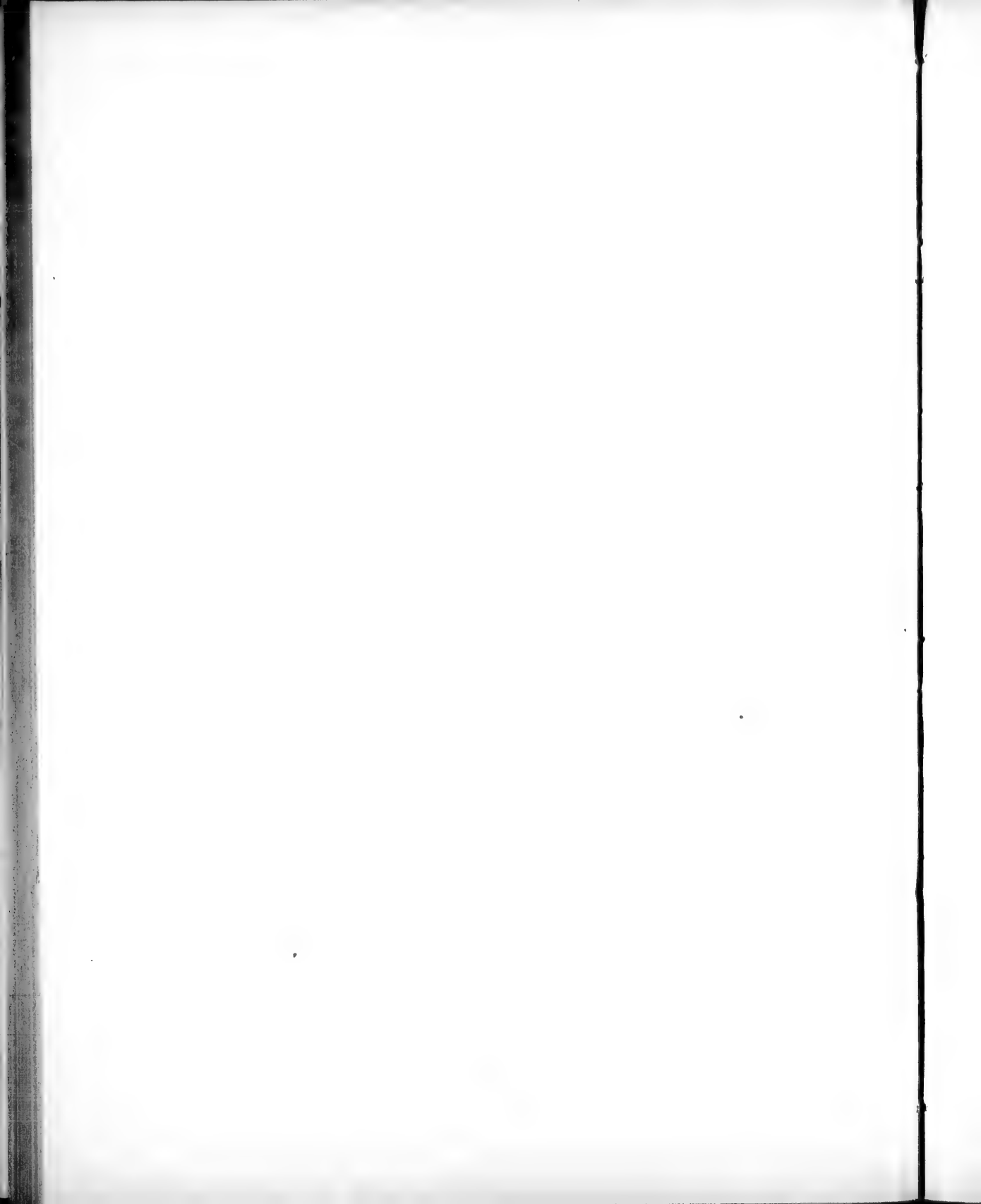
MY DEAR SIR,—My son goes by the steamer to-night to Owen Sound, and thence to Saugeen, to inspect my land, and enquire about taxes being paid. If he be at a loss where to enquire, perhaps you will kindly inform him. With kind regards, yours faithfully,

(Signed,)

SANDFORD FLEMING.

30

A. McNABB, Esq.



## EXHIBIT "Y."

OTTAWA, 21st October, 1874.

MY DEAR MR. McNABB,—On receipt of your letter of the 6th I sent it to my brother David, in order to ascertain from him if you had any claim, legal, equitable or moral, on me in connection with the unfortunate affair to which you allude. As far as I can understand the matter it is this: You and my brother had dealings together, and your son-in-law, Mr. Sproat, was in some way mixed up in them. The relations of the several parties do not however appear to have been very well defined, at least so far as I have yet learned. Amongst other matters my brother was induced to go into partnership with one Hall. You were instrumental in part, if not wholly, in bringing about the partnership. You involved yourself to a considerable extent financially in connection with it. Hall turned out a bad partner, the work in which they were engaged in turned out disastrously. You lost a considerable sum of money, my brother lost everything he had, and the way of living which he previously enjoyed; all his property having been made over to the bank, and he left dependent to a certain extent on me for the means of living, and wholly dependant when out of a situation. The Bank wished to convert the property obtained from my brother into money. I was applied to and named the full amount I would give for it, and in this way my brother's property has passed into my hands, and my brother has obtained a discharge from the Bank. But he has been left entirely penniless by the transaction. This in brief is a history of the matter, as far as I know it. But I do not see how in any way I am bound to bear the losses you have sustained. Neither you nor my brother asked or obtained any advice from me, before you led into the business. I knew nothing of it until all the mischief was done. My brother had claims on me only as a brother, and only as said did I come to advance money on property I did not want, so as to get for him an honorable discharge from the Bank, and only as such have I for the last year been advancing him the means of sustenance. You will surely see on reflection, that I cannot in any way be expected to pay your losses. If the law of honor or any other law, hold me liable for all losses sustained by third parties, in connection with every one of my relations, with or without my knowledge, you will admit that my responsibilities would be indeed more than any man would care about.

Yours very truly,

(Signed,) SANDFORD FLEMING. 30

## EXHIBIT "Z."

SOUTHAMPTON, 13th Dec., 1878.

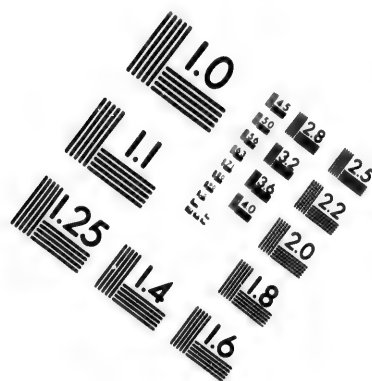
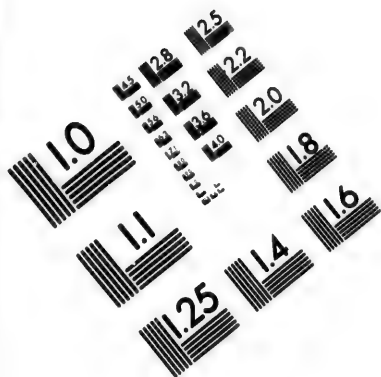
DEAR WILLIE,—Many thanks for you kindly consenting to attend the tax sale. I enclose a list of the lots we wish you to purchase and draft to pay the Treasurer, should the L. Range lots in Sauguen be not redeemed bid down to (10) ten acres in each lot, they front on and are posted on the lake shore. I want to get the 10 acres taken off the rear. Be careful not to take the front. Buy all in your own name. I don't want to be known, so please buy in your own name. Keep the list strictly private. You can return any draft not required.

Yours sincerely,

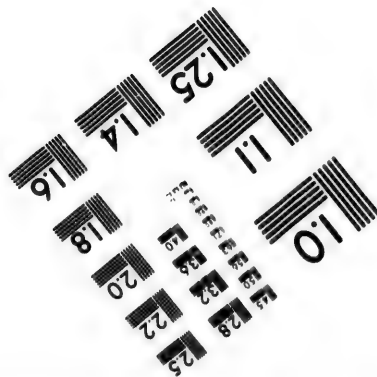
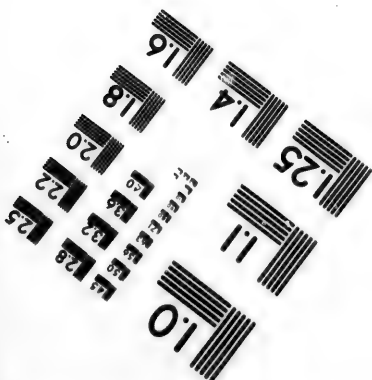
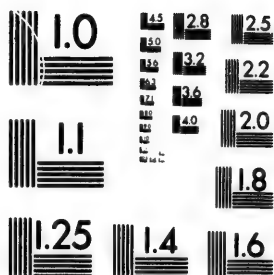
(Signed,)

A. McNABB.

40



# IMAGE EVALUATION TEST TARGET (MT-3)



15 28 25  
32 22  
20  
9

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## EXHIBIT "A 2."

Tax lots to be purchased :

|                            |                                      |         |
|----------------------------|--------------------------------------|---------|
| Elderslie, No. 33, 11 Con. | 100 acres, bid down to 50 acres..... | \$21 08 |
| Saugeen, 12, 14 "          | 100 " " " 50 " .....                 | 52 28   |
| " 57, L. R'ge              | 89 " " " 10 " .....                  | 48 80   |
| " 58,                      | 100 " " " 10 " .....                 | 57 22   |
| " 59,                      | 100 " " " 10 " .....                 | 56 90   |
| " 60,                      | 100 " " " 10 " .....                 | 56 53   |

---

\$292 81

10

Crown Lands draft... \$101 52

" " " .... 71 25

Ontario Bank ..... 72 00

Merchants Bank..... 49 00.—\$293 77. The above draft should be cashed at par.

## EXHIBIT "B 2."

Treasurer's certificate of tax sale, County of Bruce, to W. A. McLean, of Lot 60, Lake Range, Saugeen Township, 103 acres, for \$56.53, dated 17th December, 1878. Assignment endorsed on back of same—W. A. McLean to John M. McNabb.

## EXHIBIT "C 2."

Treasurer's certificate of tax sale, County of Bruce to W. A. McLean, of Lot 59, Lake Range, 20 Saugeen Township, 104 acres, for \$56.99. Dated 17th December, 1878. Assignment endorsed on back of same—W. A. McLean to John M. McNabb.

## EXHIBIT "D 2."

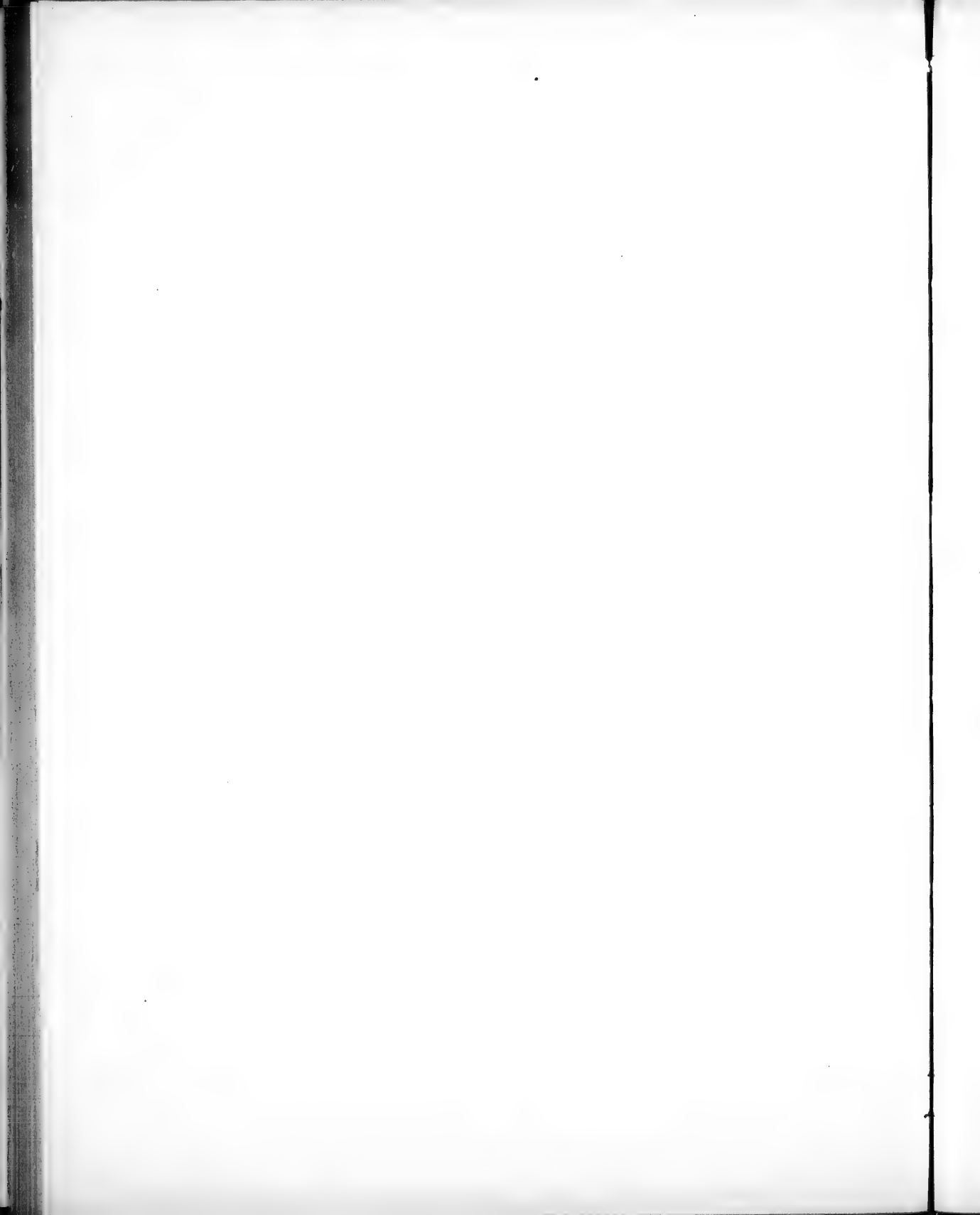
Treasurer's certificate of tax sale, County of Bruce to W. A. McLean, of Lot 58, Lake Range, Saugeen Township, 105 acres, for \$57.20. Dated 17th December, 1878. Assignment endorsed on back of same—W. A. McLean to John M. McNabb.

## EXHIBIT "E. 2."

Treasurer's certificate of tax sale, County of Bruce, to W. A. McLean, of lot 57, lake range, Saugeen Township, 89 acres, for \$48.80. Dated, 17th December, 1878. Assigned, endorsed on back of same. W. A. McLean to John M. McNabb.

30





## EXHIBIT "F. 2."

## TREASURER'S OFFICE, COUNTY OF BRUCE.

No. 15. \$219.45, ac. Tax sale purchases; Walkerton, 18th December, 1878; received from Mr. W. A. McLean, the sum of \$219.45 ac. tax sale, purchases. Certificates will issue as soon as convenient, provided any balance found due be paid at notification.

(Signed,)

JAMES G. COOPER,  
*Treasurer County of Bruce.*

## EXHIBIT "G 2."

W. A. McLEAN, to County of Bruce, tax purchases.

|                                              |                |    |
|----------------------------------------------|----------------|----|
| Township of Saugeen, lake range. lot 57..... | \$48 80        | 10 |
| " " " 58.....                                | 57 22          |    |
| " " " 59.....                                | 56 90          |    |
| " " " 60.....                                | 56 53          |    |
|                                              | <hr/> \$219 45 |    |

WALKERTON, 17th December, 1878.

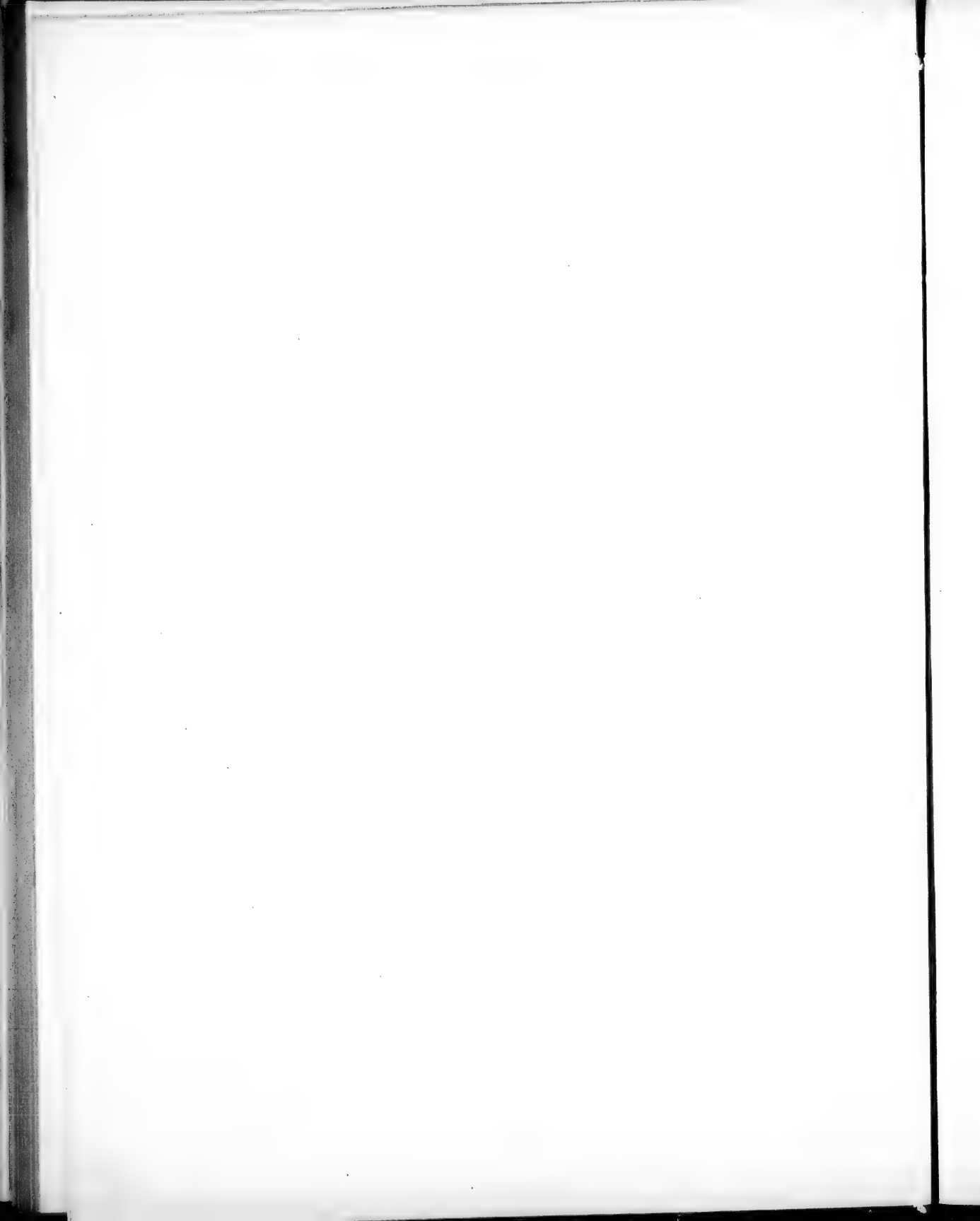
## EXHIBIT H. 2.

To all whom these Presents shall come.

We, ROBERT BAIRD, of the Town of Kincardine, Esquire, Warden, and JAMES GRAHAM COOPER, of the Town of Walkerton, Esquire, Treasurer of the County of Bruce, send greeting.

WHEREAS, by virtue of a warrant under the hand of the Warden, and Seal of said County, 20 bearing date the twenty-fifth day of July, one thousand eight hundred and seventy eight, commanding the Treasurer of said County to levy upon the land hereinafter mentioned, for the arrears of taxes due thereon, with his costs, the Treasurer of said County did on the seventeenth day of December one thousand eight hundred and seventy-eight, sell by public auction to William A. McLean, of the Town of Walkerton, in the County of Bruce, Attorney-at-Law, those certain parcels or tracts of land and premises hereinafter mentioned, at and for the price or sum of two hundred and nineteen dollars and forty-five cents, of lawful money of Canada, on account of the arrears of taxes alleged to be due thereon up to the thirty-first day of December, one thousand eight hundred and seventy-seven, together with costs.

NOW KNOW YE that we, the said Robert Baird and James Graham Cooper, as War- 30 den and Treasurer of the said County, in pursuance of such sale and "The Assessment Act," and for the consideration aforesaid, do hereby grant, bargain and sell unto John M. McNabb, of the Village of Southampton, in the County of Bruce, Gentleman, Assignee of the aforesaid William A.



## EXHIBIT " M 2."

Copy of Reporter newspaper, published at Kincardine, County of Bruce, dated 17th October, 1878, showing advertisement of County Treasurers sale of lands for taxes for 1878, to be held on 17th December, 1878, in which lots 57, 58, 59, and 60, Lake Range, were included.

## EXHIBIT " N 2."

Copies of notices sent by collector of Saugeen Township to Great Western Railway Company for the year 1873, referring to lots in question :

List of lands given in detail including acreage :—

|                                                                                     |                                    |      |    |
|-------------------------------------------------------------------------------------|------------------------------------|------|----|
| $\left\{ \begin{array}{l} \text{Taxes for} \\ \text{year 1873} \end{array} \right.$ | Lake Range, Saugeen, Lot 57, ..... | 0-40 | 10 |
|                                                                                     | " " " " 58, .....                  | 2-30 |    |
|                                                                                     | " " " " 59, .....                  | 2-30 |    |
|                                                                                     | " " " " 60, .....                  | 2-30 |    |

## EXHIBIT " O 2."

Copies of Assessment Notices sent by Assessor of Saugeen to Great Western Railway for 1874 :

|                                                               |           |
|---------------------------------------------------------------|-----------|
| 144 $\frac{10}{100}$ acres in Saugeen Township, assessed..... | \$1106 95 |
| 7.52 " " Port Elgin, " .....                                  | 75 05     |
|                                                               | <hr/>     |
|                                                               | \$1182 00 |

## EXHIBIT " P 2."

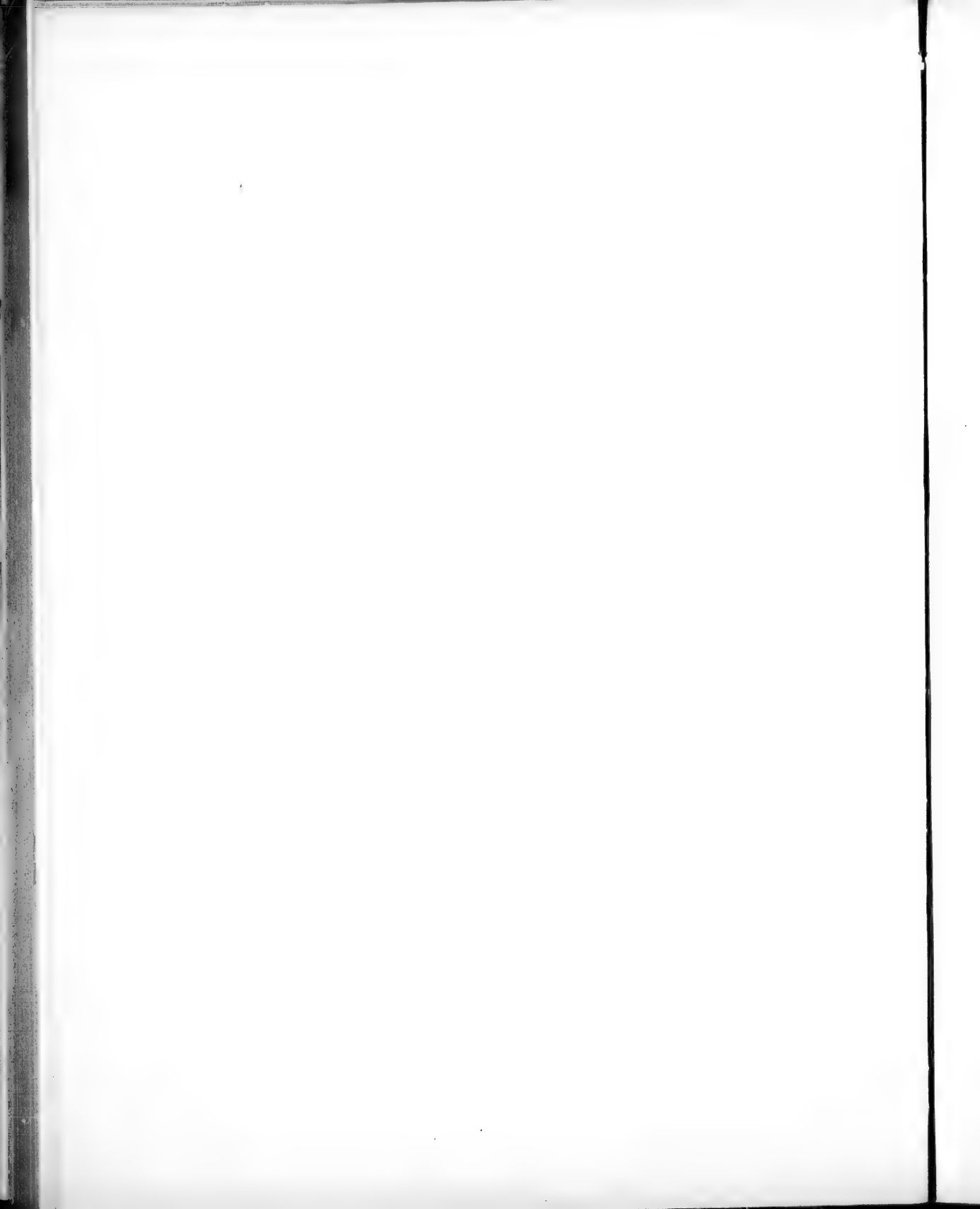
20

Copies of Assessment Notices sent by Assessor of Saugeen to Great Western Railway for 1875 :

|                                                      |           |
|------------------------------------------------------|-----------|
| 144. 71, acres in Saugeen Township, assessed at..... | \$1106 95 |
|------------------------------------------------------|-----------|

## EXHIBIT " Q 2."

Copies of Assessment notices sent by Assessor of Saugeen to Great Western Railway for 1876, 146.71 acres in Saugeen Township, assessed at \$2000. The extra 2 acres were purchased from Thomas Turners, Lot 27, Con. 4, Saugeen.



## EXHIBIT "R 2."

Copies of notice sent by Collector of Saugeen Township to Great Western Railway for the year 1877:

|                                          |           |
|------------------------------------------|-----------|
| 116, 46 acres, assessed at.....          | \$1500 00 |
| List of Lands given in detail, including |           |
| Acres.                                   |           |
| Lot 57, Lake Range, Saugeen.....         | 40        |
| " 58, " " " .....                        | 2 30      |
| " 59, " " " .....                        | 2 30      |
| " 60, " " " .....                        | 2 30      |

## EXHIBIT "S 2."

10

Copy of Assessment Notice, (W. Murker, junr.,) Assessor, Saugeen Township sent to W. G. & B Railroad, 144 acres, assessed at \$2,604.

## EXHIBIT "T 2."

Letter from John Wallace, collector of taxes for year 1875, Saugeen Township, to G.W.Railroad, claiming for taxes on assessment of \$2,604—\$41.32.

## EXHIBIT "U 2."

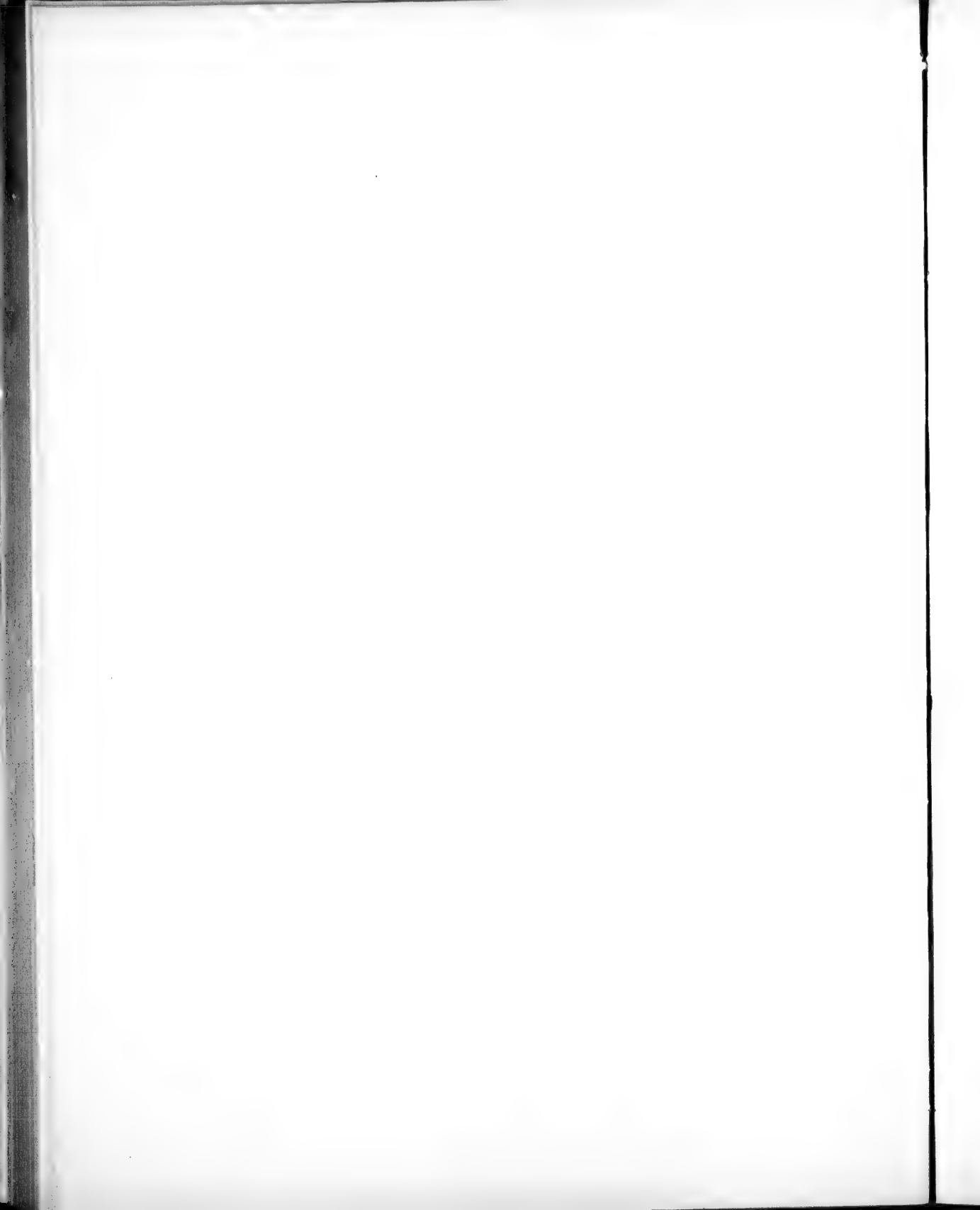
Letter from John Wallace, Collector, Saugeen Township, for year 1876, claiming for taxes on \$2,604—\$39.35.

## EXHIBIT "V 2."

Copy of Assessment Schedule (W. Murker, jr.) Assessor, Saugeen Township, for 1876, sent to 20 G. W. Railroad, 146.71 acres assessed at \$2,644.

## EXHIBIT "W 2."

Letter from John Wallace, Collector, Saugeen Township, dated 26th March, 1877, claiming from G. W. Railroad on assessment of \$2,635—\$38.22.



McLean, his heirs and assigns, and those certain parcels or tracts of land and premises containing four hundred and one acres, be the same more or less, being composed of Lots numbers Fifty-seven, Fifty-eight, Fifty-nine and Sixty, in the Lake Range, in the Township of Saugeen, and County of Bruce.

IN WITNESS WHEREOF we, the said Warden and Treasurer of the said County, have hereunto set our hands and affixed the Seal of the said County, this Twentieth day of December, one thousand eight hundred and seventy-nine, and the Clerk of the County Council hath countersigned.

[L. S.]

Sgd

ROBT. BAIRD,

Warden.

10

Sgd

JAMES G. COOPER,

Treasurer.

Countersigned

Sgd

GEO. GOULD.

On the above deed there is endorsed the following certificate :

I certify that the within instrument is duly entered and registered in the Registry Office for the County of Bruce in Book B, for Township of Saugeen, at 2 o'clock p.m., of the 6th January, A. D., 1880.

No. 2223

(Sgd.)

CHARLES ASTLEY,

Depy. Regr. 20

## EXTRACT "J. 2."

Abstract of assessment of lots 57, 58, 59 and 60, Lake Range, Township of Saugeen.

|      |                  |                                                           | Assessed Value      |
|------|------------------|-----------------------------------------------------------|---------------------|
| 1862 | Lots 59 and 60   | Assessed to David Fleming                                 | 200 Acres \$1330 00 |
| "    | " 57 and 58      | " Alexander Fleming                                       | 200 " 1300 00       |
| 1863 | " 59 and 60      | " David Fleming                                           | 200 " 1100 00       |
| "    | " 57 and 58      | " Alexander Fleming                                       | 200 " 1130 00       |
| 1864 | " 59 and 60      | " Elias Smith, D. Fleming, owner                          | 200 " 1100 00       |
| "    | " 57 and 58      | " A. Fleming, owner                                       | 200 " 1130 00       |
| 1865 | " 57, 58, 59, 60 | " Elias Smith                                             | 400 " 2230 00 30    |
| 1866 | " 57, 58, 59, 60 | " Elias Smith, 400 acres, real, \$1,850, personal, \$3.00 | 2150 00             |
| 1867 | " 57, 58, 59, 60 | " Hiram Parker, tenant,                                   | 400 Acres 2150 00   |
| 1868 | " 57, 58, 59, 60 | " Hiram Parker, Fleming, Toronto, owner                   | 400 " 2150 00       |
| 1869 | " 57, 58, 59, 60 | " —. Fleming, Toronto,                                    | 400 " 2150 00       |
| 1870 | " 57, 58, 59, 60 | " H. Parker, tenant, J. Fleming, owner,                   | 400 " 2150 00       |





|      |   |                |                                        |     |   |         |
|------|---|----------------|----------------------------------------|-----|---|---------|
| 1871 | " | 57, 58, 59, 60 | Assessed to David Fleming, owner,      | 400 | " | 2160 00 |
| 1872 | " | 57, 58, 59, 60 | " D. Fleming, owner, A. McNabb, agent, | 400 | " | 2165 00 |
| 1873 | " | 57, 58, 59, 60 | " " " " " "                            | 392 | " | 3136 00 |
| 1874 | " | 59, 60         | " " " " " "                            | 207 | " | 1759 00 |
| "    | " | 57, 58         | " Sandford Fleming                     | 194 | " | 1648 00 |
| 1875 | " | 57, 58, 59, 60 | Assessed on Non-Resident Roll          | 393 | " | 3930 00 |
| 1876 | " | 57, 58, 59, 60 | " " "                                  | 401 | " | 4411 00 |
| 1877 | " | 57, 58, 59, 60 | " " "                                  | 401 | " | 4411 00 |
| 1878 | " | 57, 58, 59, 60 | " " "                                  | 392 | " | 4321 00 |

Great Western Railway Company assessed for  $\frac{3}{4}$  acres for track through said lots in 1877 and 1878, in previous years the company were assessed for track through township on lots mentioned.

10

I, Robert Barrie Fleming, Clerk of the Township of Saugeen, do hereby certify, that the above is a correct return of the assessments of lots No. 57, 58, 59 and 60, Lake Range, Township of Saugeen for the years 1862 to 1878, both years inclusive, and that the said lots were liable to be sold for taxes in the years 1868, 1871, 1874 and 1878, as returned by the County Treasurer, Township of Saugeen, 28th February, 1881.

(Signed,) ROBT. B. FLEMING,  
Clerk, Township of Saugeen.

## EXHIBIT "K. 2."

20

List of lands in the municipality of Saugeen, for which a Warrant for Sale was issued 25th July, A. D. 1878.

|             |                 |                  |
|-------------|-----------------|------------------|
| Concession  | or Street Lots  | or Parts of Lots |
| Lake Range, | 57, 58, 59, 60, |                  |
| xiv.        | 12.             |                  |

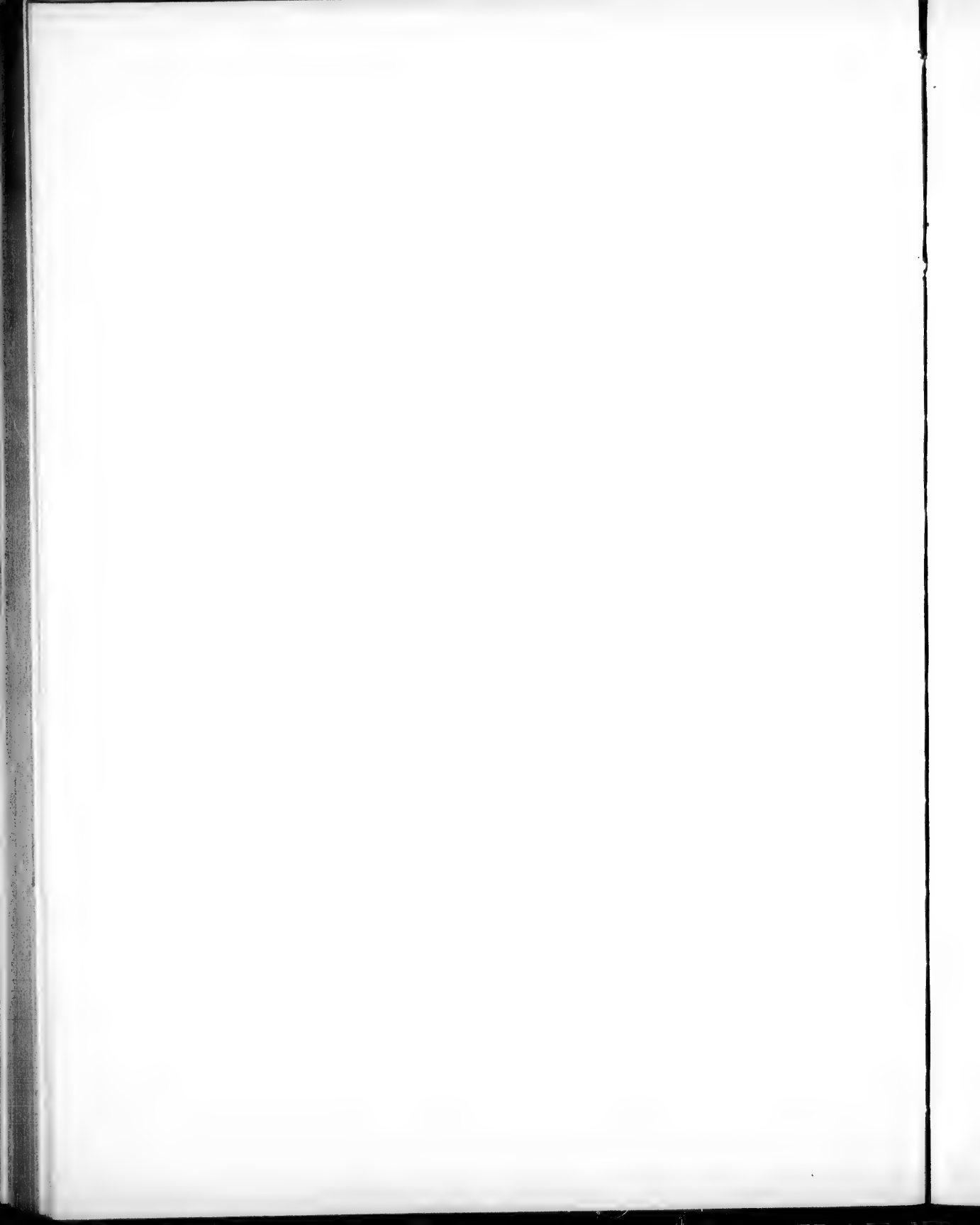
Dated, at Walkerton, the 30th day of January, A. D. 1878.

(Signed,) JAMES G. COOPER,  
Treasurer, County of Bruce.

## EXHIBIT "L. 2."

Lands liable to be sold for taxes in the Township of Saugeen, for the year 1878, are lots 57, 58, 59 and 60, Lake Range, and lot 12, Con. 14. I do hereby certify that I have examined all the 30 lots in the list named, and to the best of my knowledge believe none of the said lots have become occupied.

(Signed,) W. MURKER, Jr.  
Assessor.



## EXHIBIT "X 2."

Copy of Assessment Notice for 1877, from W. Murker, jun., Assessor, Saugeen Township, sent to G. W. Railroad, showing 115.79 acres assessed at \$2,635.

## EXHIBIT "Y 2."

Certificate from Treasurer, County of Bruce, dated 27th April, 1881, that "A"—(Z2)—is a correct copy of Warden's warrant for year 1878, to sell lands in arrears for taxes; and that "B"—(A3)—is a correct copy of so much of the list of lands referred to in said warrant, as relates to Saugeen Township.

## EXHIBIT "Z 2."

"A"—Copy of warrant from R. Baird, Warden of Bruce, to County Treasurer, to sell lands 10 in arrears for taxes, dated 25th July, 1878.

## EXHIBIT "A 3."

"B"—Copy of list of land in Saugeen Township, referred to Warden's warrant to be sold for arrears of taxes in 1878:—

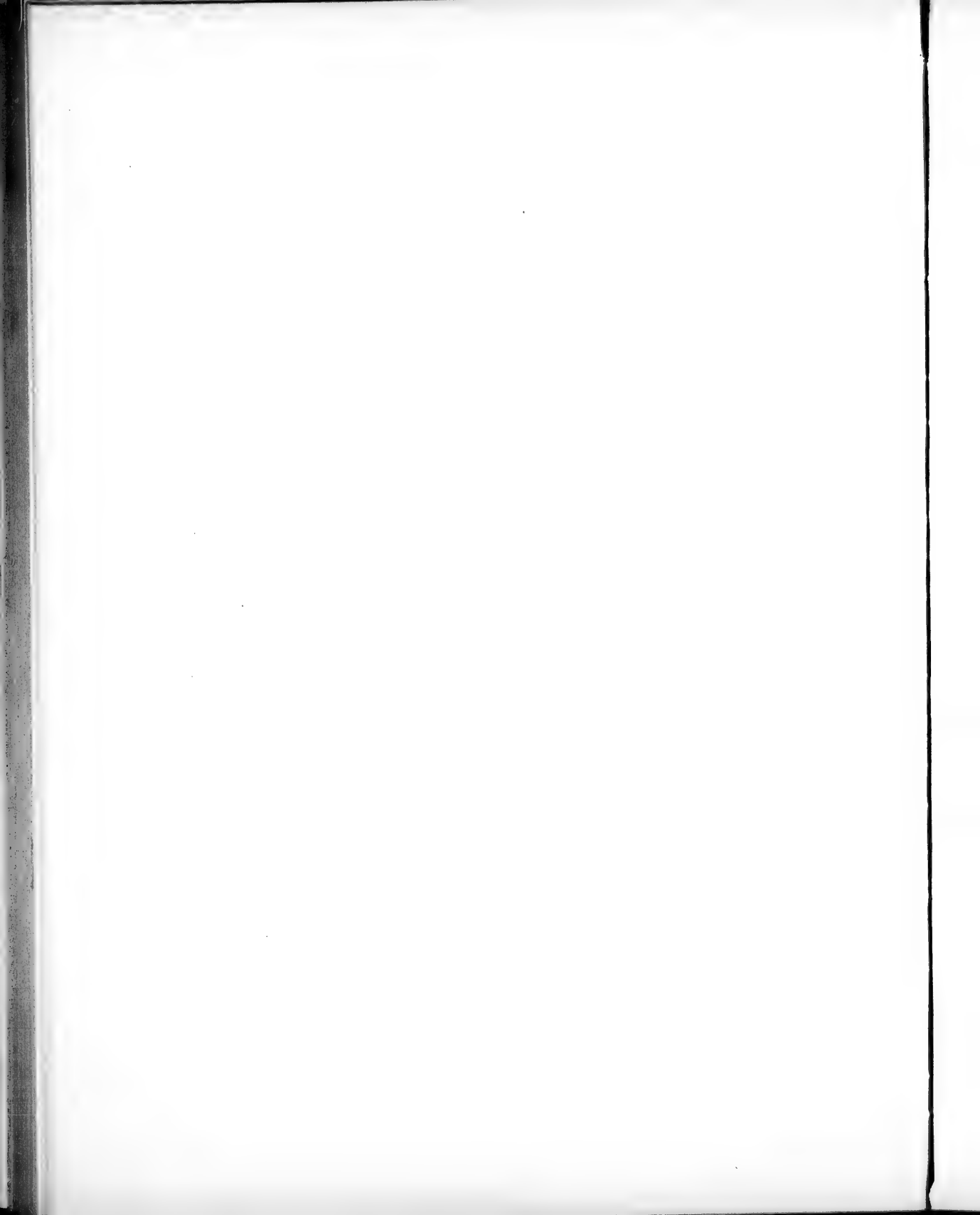
|                                  |         |
|----------------------------------|---------|
| Lot 57, Lake Range, Saugeen..... | \$46 33 |
| " 58, " " .....                  | 54 55   |
| " 59, " " .....                  | 54 23   |
| " 60, " " .....                  | 53 88   |
| " 12, Con. XIV. " .....          | 49 83   |

## EXHIBIT "B 3."

20

Extract from Ontario Gazette, and Bruce Reporter advertisement of lands for arrears of taxes in Saugeen Township for the year 1878:

|            | Lot.  | Acres. | Taxes.     | Costs.    | Total.  | Remarks.  |
|------------|-------|--------|------------|-----------|---------|-----------|
| Lake Range | 57 .. | 89 ..  | \$46 33 .. | \$2 47 .. | \$48 80 | Patented. |
| "          | 58 .. | 105 .. | 54 55 ..   | 2 67 ..   | 57 22   | "         |
| "          | 59 .. | 104 .. | 54 23 ..   | 2 67 ..   | 56 90   | "         |
| "          | 60 .. | 103 .. | 53 88 ..   | 2 65 ..   | 56 23   | "         |
| XIV.       | 12 .. | 100 .. | 49 73 ..   | 2 55 ..   | 52 28   | "         |



## EXHIBIT "C 3."

SOUTHAMPTON, 30th Nov., 1878.

*To the Corporation of the Township of Saugeen :*

GENTLEMEN,—I wish to draw your attention to the disadvantages I have had to contend with during the last 5 years in consequence of having, I may say, no road to the land which I have leased from Mr. Fleming. The farm is composed of 4 lots, and has paid taxes for over 25 years, during the past time has never got one cent of statute labour expended on South Street, the road I have got to travel to get to the land which I am cultivating ; such being the case I trust you will give my case a favourable consideration and grant a reasonable sum to be expended on said street.

10

I am Gentlemen, your obedient servant,  
(Signed,)

HENRY HARMER,  
No. of Lot 57, 58, 59, 60.

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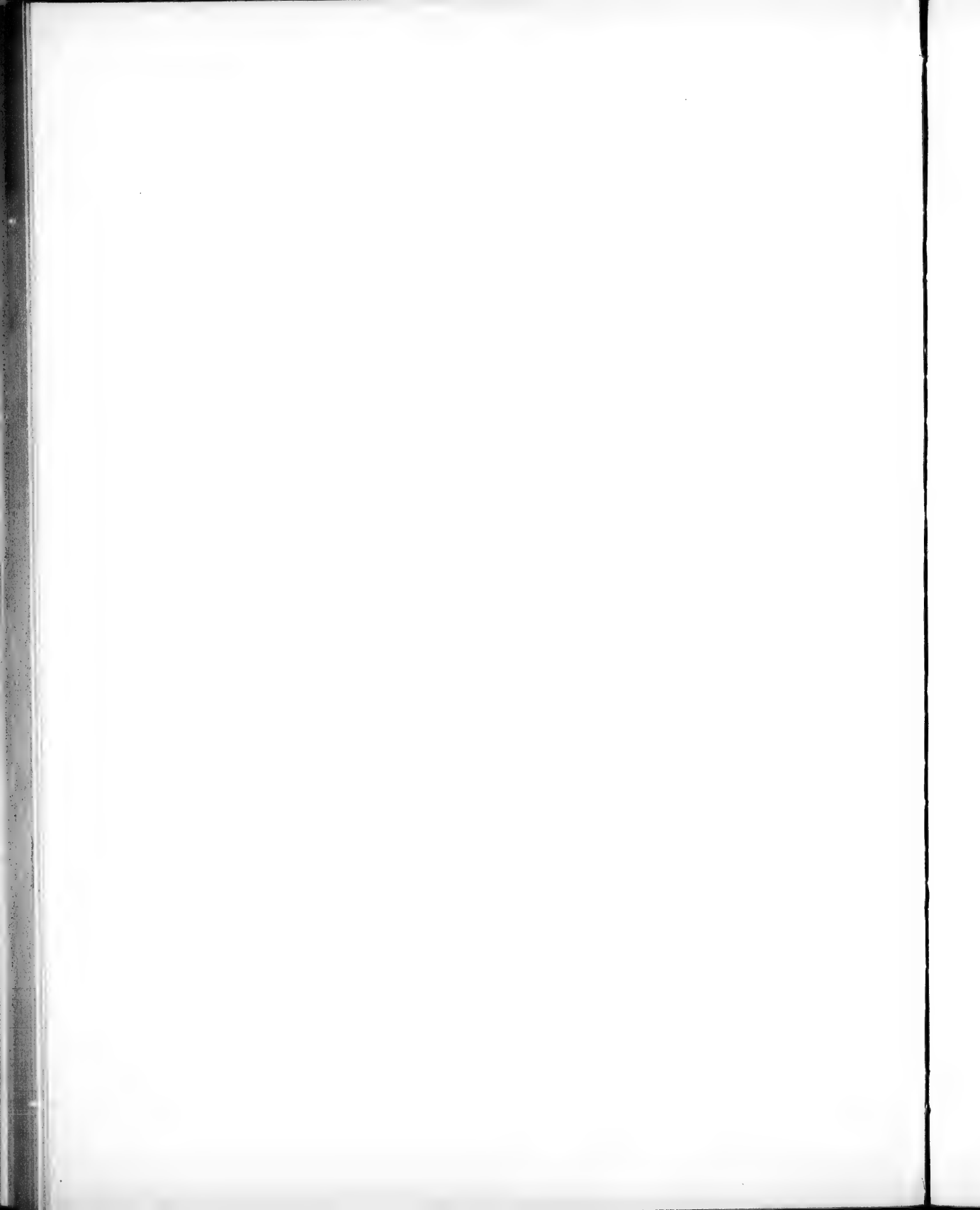
## JUDGMENT.

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THE HON. THE CHANCELLOR, J. G. SPRAGGE.

The case has been very fully and ably argued, and probably before the final disposition of the case, I may desire to examine further into the case of *Ley v. Wright*, though perhaps there is sufficient for its disposal independently of that. I see no reason to alter the view that I expressed at the commencement of the case. Dr. Story says that Courts of Equity do not interfere merely on the ground that a transaction is against good morals, or such as a man of honour 20 would not enter into.

If Courts of Equity do interfere in cases of that kind, this would be a very plain and palpable case for interfering. I don't know that any case has ever been before me in which there has been a more flagrant dereliction from what I should call fair and honest dealing between men. This man, Alexander McNabb, had for years at all events before, putting out of the question the agency to the extent that has been contended for by the plaintiff, he had been acting for the plaintiff, and had been in communication with him. There had been intercourse between them in letters. There had been acts done in relation to this same property by Alexander McNabb, from time to time. Then this land as to which he acted as agent to a certain extent, is offered for sale, and Alexander McNabb stealthily gets some person 30 to bid for him. He had a right to do that of course, if he chose. He got Mr. Maclean innocently to bid for him, giving him very strict directions that on no account his name should be disclosed, that it should be kept secret who it was was the person really bidding, and when he comes to



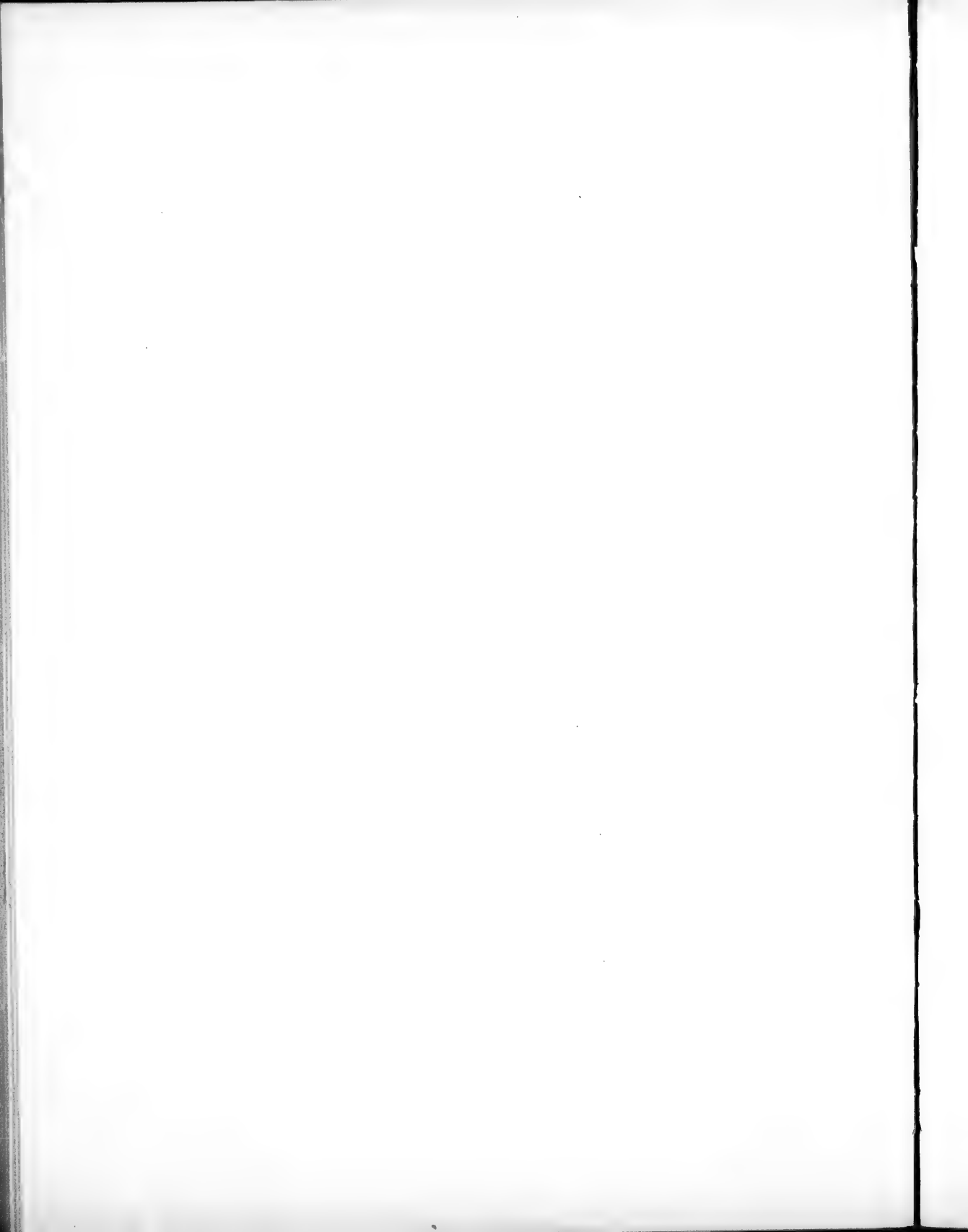
give evidence, he says he can't conceive any reason why he should have done this. Why, the reason is palpable. After what had occurred, and his relations with the owner of the land, it was palpable that he should try to preserve from the knowledge of any person, especially from the owner of the land, the fact that he behind his back was purchasing this land. But that is not all, nor is it the extreme length to which he afterwards went, for in the summer after he had made those parties, an agent of the owner of the land comes to him, is driven to his place by the person who was then tenant, and who was ignorant also of the sale. The sale had then taken place.

The agent informs Mr. McNabb that he is about to enter into a new arrangement, that he is going to give McNabb a new lease, that a barn is to be built which will cost \$260; informs him of all this, and forms his plans for the future, and McNabb merely makes observation not that he was not a good tenant but that he was a very good man. What the distinction is between his being a very good man when the fact of the agency was talked over, and his being a very good tenant, I confess I cannot understand; there is no distinction. It is a mere quibble. At that time he was the purchaser. It was ripening into a title which it would be expected to be impossible to be controverted, and in due time he obtains his deed. Well, with regard to that, one hardly likes, unless it is necessary, to designate in such terms as such conduct deserves, what the real character of it is. It was stealthy: it was a mean concealment of a fact: it does appear to me certainly as base an act almost between parties in such a relation as has ever come under my notice. It is urged however and I threw it out myself at the first, that what must be judged here is not the morality and honor of the transaction, as put by Dr. Story in his commentaries, but whether there was a legal duty due from McNabb to the other party: and there I think exists the difficulty. There had been an agency in paying the taxes previously to that, but they were only isolated transactions: as taxes had once or twice become due, they had been paid through the agency of McNabb; McNabb knew therefore that it was the intention of the party to pay from time to time, though the amount was considerable, and he did it merely acting as an agent from time to time. 10

I don't think therefore any duty was thrown upon him to continue to pay the taxes at that time. Mr. Ferguson argues, and I think rightly, that the business agency for paying taxes, if it ever existed, had ceased at that time. I doubt if it ever existed at all; I am inclined to think it hadn't; but at all events that it wasn't existing at that time—nay, not only had he discontinued requesting McNabb to pay and to draw upon him for it, and in that way sending the money, but he had appointed some other person, Mr. Hall, to act as his agent in lieu of McNabb: so that I suppose upon that point any judgment must be for defendant. 30

Then when we come to the legal points of the case, I at present cannot see how this case is distinguishable from "Ley v. Wright," but before that there is a great deal in the observation addressed to me by Mr. Boyd, as to taxes for '75: for though there was a deduction on that account, on some account or other, that is to say, that the acreage of the lots assessed was far less than the full acreage of the lots, a deduction might have been made in respect of this highway which was running along near the lake. I am inclined to think it is not necessary to consider that point however, because I think "Ley v. Wright," so far as I have seen it at present—I will look at it again more particularly—is not distinguishable from this case. I put it to Mr. Fer- 40





guson whether, if the taxes had been fully paid for '76 and '77, and only in arrear for '75, they could have sold as if no taxes had been paid for '75, '76 and '77. I put that as an extreme case to test his argument, and he said it would, but that appears to me to run counter to the old rule which I held in "*Austin v. Harrington*," that the land could only be sold for what was actually due. If, therefore, they sold when 2-3rds of the taxes out of the three years had been paid, they would surely come within the mischief of that rule.

Again the case of *Yokeham v. Hall*, is a good deal to the same point, because, here it was held that the assessment must be in such a shape that a party could be able to redeem for what was really due on the lots to be assessed separately. Well, here the party couldn't redeem, without paying three times as much as was really due on the case to which I referred.

10

That however is a question merely of agreement, and so it was in *Ley v. Wright*. If it comes to be so insignificant and unsubstantial, as to the ten acres that were spoken of, why that might admit of different elements of consideration, but where it is something really substantial, then, I fancy we must try it by a stricter rule. Here, according to the assessment, and according to all the papers produced for two or three years, leaving the case of '75 for the present out of the question; for two of these years the taxes were assessed on some seven acres, between seven and eight acres against the owner of the land: There were taxes to the extent of seven or eight acres against him; taxes for that seven or eight acres being paid by another person to whom he had sold. In that case of course, they levied taxes which had been already paid: to what extent exactly, I do not know, but it would certainly be to an extent that the law would call a substantial extent, and if it is so upon that point, that would be sufficient for setting it aside. It would be an erroneous levy of taxes for more than was due, when in fact, a portion of it had not only been assessed elsewhere, but it had been actually paid elsewhere.

With regard to the assessment of this land erroneously as non resident land, when in fact it was resided upon and was occupied. I suppose that point must be considered as settled, in a case which was followed by me in *Silverthorne v. Campbell*. It was not originally held by me to that effect, but followed another case to that effect. If it be right as to the assessment with respect to the Great Western Railway's land, which appears at present time to be the turning point in the case, and at all events the principal point. Then of course the Plaintiff must succeed altogether.

I will look into the case further, but unless I change my opinion, it is that this case falls 30 within *Ley v. Wright*, and decree will be for plaintiff, and with costs I needn't say; and I might add, that if I had found against plaintiff I would have dismissed bill without costs on account of the unrighteous conduct of defendant.

It is hardly necessary to add anything more to what I have said already with regard to Mr. McNabb himself, but I cannot help saying that throughout it is lamentable that a man should have been guilty of such conduct as here shown. When he is written to, he replies that he was not purchaser but his son, when his son was only his agent to purchase, when it was just as much his, and under his control, as if his own name had appeared.



Continuation of judgment as reserved.

21st May, 1881.

At the hearing of this case I gave judgment upon the question of agency against the contention of plaintiff. At the same time I stated my impression to be upon the question of assessment the case was governed by the case of *Ley v. Wright*, 27 C. P. 522. I have since examined that case more fully, and the result has been to confirm the impression which I then entertained.

The decree will therefore be for the plaintiff with costs: the defendants might strictly set off against the costs only the taxes paid by them which are properly referable to the land owned by the plaintiff, as distinguished from that owned by the Great Western Railway Company. That would be the exact sum to be given by the plaintiff to the defendants, and for the excess, the 10 defendants would properly have their remedy, over against the municipality, but the plaintiff has not made the municipality a party defendant, for the purpose of that remedy over; and therefore the proper decree will be that the taxes paid by the defendants, and the costs payable by them to the plaintiff be set, the one against the other; the difference to be paid by the plaintiff or the defendants, according to which of the two amounts may exceed the other.

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## DECREE.

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IN CHANCERY.

BETWEEN

SANDFORD FLEMING,

*Plaintiff,*

AND

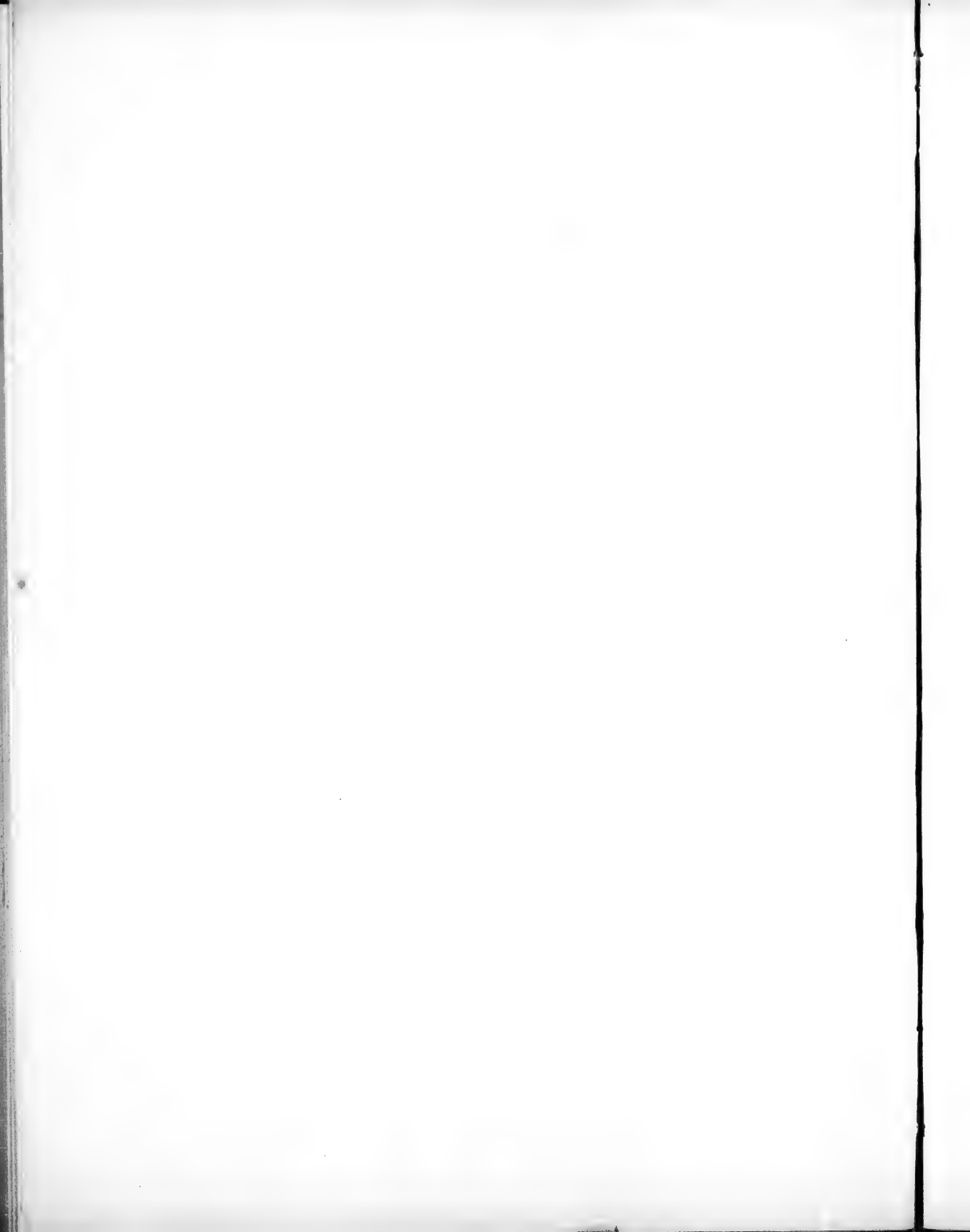
JOHN M. McNABB and ALEXANDER McNABB,

*Defendants.* 20

SPRAGGE, C. J. O.

SATURDAY, the 21st day of May, A. D. 1881.

This cause coming on for the examination of witnesses and hearing before this Court at Walkerton, on the 26th and 27th days of April last past, before the Honorable John Godfrey Spragge, sitting as Chancellor, in presence of Counsel for all parties. Upon opening of the matter, upon hearing read the pleadings and proceedings had and taken herein, and upon hearing the evidence adduced and what was alleged by Counsel aforesaid, this Court was pleased to direct that this cause should stand over for judgment and the same coming on this present day for judgment—



1. This Court doth declare that the alleged sale for taxes of the lands and premises in question herein in the pleadings mentioned was illegal and void, and that the deed to the defendant John McNabb ought to be delivered up and cancelled, and doth order and decree the same accordingly.

2. And this Court doth further order and decree that it be referred to the Master of this Court at Peterborough to take an account of the value of the timber and other trees, if any, cut or removed by the defendants or either of them, or by their consent or direction, or with the consent or direction of either of them, from off the said lands and premises, and the damages, if any, sustained by the plaintiff by reason thereof and to take an account of the amounts, if any, properly expended by the defendants in payment of the taxes upon the said lands and premises and to tax to the plaintiff his costs of this suit. 10

3. And this Court doth further order and decree that the said Master do set off *pro tanto* the amount, if any, which he may find that the defendants have properly expended for taxes as aforesaid against the amounts which he may allow the plaintiff for timber, if any, cut and removed from off the said lands and premises, and for damages, if any, and for the said costs and do certify the balance payable by the plaintiff or the defendants as the case may be.

4. And this Court doth further order and decree that the party by whom the said Master shall find a balance payable do pay the same to the party to whom it may be found payable 20 forthwith after the said Master shall have made his report.

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## REASONS OF APPEAL.

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This is an appeal from the Judgment of the Court of Chancery, setting aside a sale for taxes. 30

The land sold consists of lots fifty-seven (57), fifty-eight (58), fifty-nine (59), and sixty (60) in the Lake Range of the Township of Saugeen.

Lot fifty-seven (57) contains about eighty-nine (89) acres; lot fifty-eight (58), about one hundred and five (105) acres; lot fifty-nine (59), about one hundred and four (104) acres, and lot sixty (60) about one hundred and three (103) acres.

The sale took place on the 17th December, 1878. The lots were sold separately for the taxes of the years 1875, 1876 and 1877, and separate certificates given for each lot. On the 20th December, 1879, they were conveyed by the Treasurer in one deed.



It was alleged in the bill, and at the hearing, and attempted to be proved, that the defendant acted as agent for the plaintiff in the case of these lands, and so was precluded from purchasing at the sale, but upon the evidence the learned Chancellor at the hearing decided, upon this ground, in favor of the defendant.

The sale, however, was held void, and set aside upon the ground that certain portions of the lots occupied by Wellington, Grey and Bruce Railway Company had been assessed and conveyed with the remainder of the lots belonging to the plaintiff, and so the assessment and sale were void as to the whole.

The railway was laid out through these lots long before, and at the time when the assessment in question was made it occupied 40-100ths of an acre of Lot 57, and 2 30-100ths of each of the other three lots. This portion was fenced off from the rest of the lots, and had for each of 10 the years in question been assessed to and the taxes thereon paid by the Railway Company.

In 1875, the first of these years, each of the four lots was assessed to the plaintiff as containing two acres less than its actual quantity, and the land occupied by the railway was therefore not assessed to him in that year.

The whole sum for which the four lots were sold was \$219.00, but this included the costs of sale, and interest added in each year, making about \$40.00. The actual taxes assessed therefor was about \$179.00, being about 35 cents an acre for the two years during which the railway land can be said to have been included. The excess of the assessment, therefore, if any, would be on lot 57 about 15 cents, and on each of the other three lots about 80 cents or \$2.55 in all. If the railway land was included in the year 1875 also, the excess of assessment would be on lot 57 20 about 23 cents, and on the other lots about \$3.40.

The defendants submit that the Judgment of the Court appealed from is wrong, and should be reversed for the following, among other reasons:

1. The excess, if any, is too small to form a sufficient ground for setting aside the sale. In *Ley v. Wright*, 27 C. P., 522, by which it is said this case is governed, the land improperly included was about one half of the land sold, and the sum assessed was nearly doubled by the excess.
2. The land was properly assessed in 1875, and the taxes for that year were three years in arrears. The sale therefor was valid, and the irregularity, if any, is cured by the Statute.
3. The evidence shews that the assessor did at first assess the railway land to the Railway Company; the assessment of the plaintiff's land therefore was not intended to include, and did 30 not include the land occupied by the railway, and neither the plaintiff's assessment, nor the value of the land assessed to him, nor the amount charged to him, has been in any way affected by the alleged irregularities.

The defects, if any, in the assessment and sale, have been cured by the Statutes in that behalf.

The appellant refers to *McKay v. Chrysler*, 3 Sup. Ct. Rep., 436; *Hamilton v. Eggleton*, 22 C. P., 536; *Silverthorne v. Campbell*, 24 Grant, 17; R. S. O. Ch., 180, secs. 127 to 169; *Cotter v. Sutherland*, 18 C. P., 357; *Edinburgh Life Assurance Co. v. Ferguson*, 32 U. C. R., 253.





## REASONS AGAINST APPEAL.

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In addition to the facts stated in the Appellants' Reasons of Appeal, the Respondent states,

1. That the description in the Patent of lots 57 and 58, is as follows: "All that parcel or tract of land, situate, lying and being in the Township of Saugeen, etc., containing by admeasurement, 194 acres, be the same more or less, etc., being composed of lots 57 and 58 in the lake range of the said Township of Saugeen, reserving the road allowance along the bank of Lake Huron, etc.

And that the description in the Patent of lots 59 and 60 is as follows: "All those certain parcels or tracts of land, situate, lying, and being in the Township of Saugeen, etc., containing by admeasurement, 207 acres, be the same more or less, etc., being composed of lots, numbers 59 and 60, in the lake range of the aforesaid Township of Saugeen, reserving the road allowance along 10 the top of the bank of Lake Huron, etc.

2. That the said road allowance ran across the lake front of all of said lots, taking from each about an equal quantity of land, and was a travelled road.

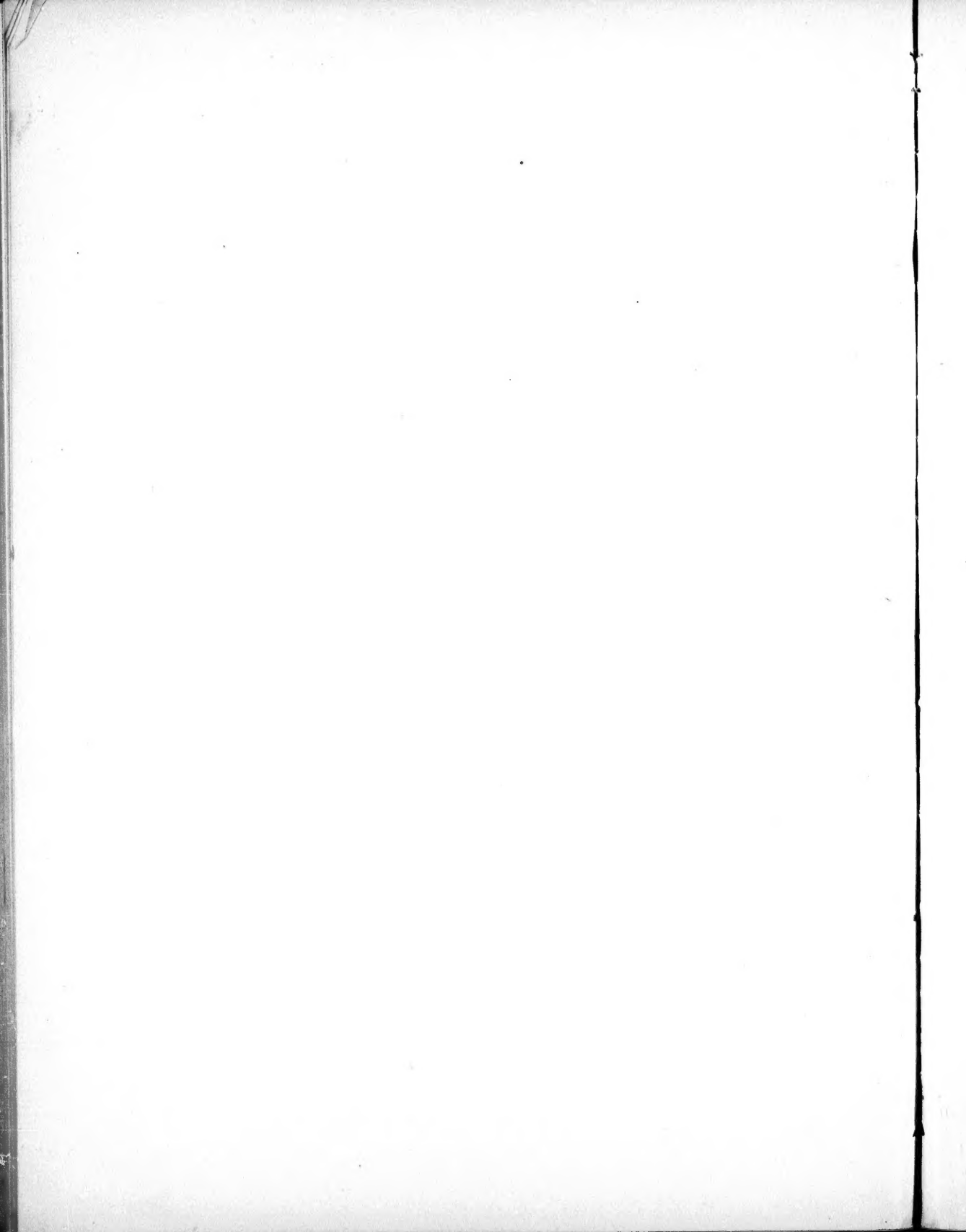
3. That prior to the year 1873, these lots were assessed as containing in all 400 acres, in the year 1873, they were assessed together, as containing 392 acres, and in the year 1874, lots 57 and 58 were assessed together, as containing 194 acres, and lots 59 and 60 were assessed together as containing 207 acres, after that date each lot was assessed separately.

4. That the said lots had been assessed as resident lands from the year 1862 to the year 1874, both inclusive, and were first assessed as non-resident in the year 1875.

5. That the quantity of land assessed to the Great Western Railway, in the Township of 20 Saugeen, for the years 1873, 1874 and 1875 was the same, viz: 144.71 acres, and this quantity in each year included the 730 acres out of these lots occupied by said Railway.

The plaintiff submits that the judgment is right and should be sustained, and the said tax sale declared invalid, for the following among other reasons.

1. The amount for which the land was sold was more than was properly due, because: (a) Lots 57 and 58 being patented as one lot, should have been so assessed, in which case the statute labour tax would have been less. (b) The amount charged against lot 57, was in fact more than the proper amount of the taxes chargeable against same. *Irwin v. Harington, 12 Gr. 179; Huse v. Merriman, 2 Greenleaf, 375.* (c) The whole of said lots were assessed as non-resident for the three years in dispute, and the full taxes returned against them, notwithstanding that a portion of each lot was used as a public road, and another portion was occupied by, and assessed to the 30



Great Western Railway, which for said years paid taxes thereon. *Doe d. Upper v. Edwards*, 5 U. C. Q. B. 594; *Yorkham v. Hall*, 15 Grant, 335; *Edinburgh Life Ins. Co. v. Ferguson*, 32 U. C. Q. B. 253.

2. The said lots were actually occupied, to the knowledge of the assessor during said years, and should have been so assessed. *Street v. Fagul*, 32 U. C. Q. B. 119; *Allen v. Fisher*, 13 U. C. C. P. at p. 71; *Fenton v. McMain*, 41 Q. B. 239.

3. There was sufficient distress during all said years on the said lots, to satisfy the taxes charged against same, and such taxes should have been so collected, *Street v. Fogul*, 32 U. C. Q. B. 119; *Allen v. Fisher*, 13 U. C. C. P. at p. 71.

4. The assessor's certificate that should be attached to the list of lands in arrear for taxes for 10 three years pursuant to section 110 of The Assessment Act was not in proper form, nor was it properly verified; and it was the duty of the assessor to have returned these lots as occupied, in which case they would not have been sold, secs. 109, 111 and 130, Assessment Act; *Nickery v. Ferguson*, 36 W. 236.

5. The land assumed to be sold and conveyed to the defendant John M. McNabb by the tax deed in question, comprised the whole of the acreage contained in each lot, and the said deed purported to convey to him 401 acres for the one consideration of \$219.45, thus including the land of the Great Western Railway and the road allowance. *Ley v. Wright*, 27 U.C.C.P., *Blackwell on Tax Titles*, p. 19<sup>o</sup>.

6. The said sale, if upheld, will convey to the said defendant the land occupied by the said 20 railway on which there has never been any taxes in arrear, and the sale as far as such land is concerned is void, and if void as to part of the land it is void as to the whole. *Ley v. Wright*; *Hamilton v. Eggleston*, 22 U. C. C. P. 536; *McKay v. Chrysler*, 3 Supreme Court R. 437.

7. The County Treasurer should not have sold the whole of said lots which were worth \$8000 to \$10,000 for these taxes amounting to \$219.45, but should have sold only a portion, the defendant, Alexander McNabb, having instructed his agent to pay the taxes for 10 acres out of each lot—he could have done this. Sec. 137 Assessment Act.

8. The sale in question is invalid as, owing to the fiduciary relationship that existed between the respondent and the appellant Alexander McNabb, the latter could not become purchaser of the premises in question except for the benefit of the respondent. 30

9. For these reasons, and those assigned in the judgment in the Court below, the respondent submits that this appeal should be dismissed.